

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

April 25, 2014

- I. **ATTENDANCE** - The Vice-Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, April 25, 2014. Members present were Vice-Chair Kathryn Moore; Janice Meyer; James Griggs; Thomas Glover and Noel White. Absent was: Chairman Barry Stumbo. Others present were: Casey Kaucher, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones, Department of Law. Staff members in attendance were: Bill Sallee, Jimmy Emmons, and Tammye McMullen.

Note - At this time, Vice-Chair Kathryn Moore announced the recognition of Joseph Smith, who had resigned from the Board of Adjustment due to his recent appointment to the Planning Commission.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the February 28, 2014 meeting would be considered at this time.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (Chairman Stumbo absent) to approve the minutes of the February 28, 2014 meeting.

Swearing of Witnesses – Prior to sounding the agenda, the Vice-Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time.

PUBLIC HEARING ON ZONING APPEALS

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Vice-Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Vice-Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
2. **No Discussion Items** - The Vice-Chair asked if there were any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

- B. **Transcript or Witnesses** - The Vice-Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.

- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2014-19: PETER TATE** - appeals for variances to reduce: 1) the required side yard from 18 inches to 6 inches; and 2) the required rear yard from 20 feet to 8 feet, in order to build an addition on the rear of a detached accessory structure (garage) in a High Density Apartment (R-4)/Historic Overlay (H-1) zone, within the defined Infill & Redevelopment Area, at 101 Hampton Ct. (Council District 1).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variances should not adversely affect the subject or surrounding properties and

will not cause a health, safety or welfare problem. It will not negatively affect the character of the surrounding neighborhood because the addition will likely be unnoticeable from anyone's property except the applicant's. The Board of Architectural Review has approved the design of the addition and remodel, which ensures that it has met the guidelines for Historic Preservation.

- b. Granting the requested variances will not be an unreasonable circumvention of the Zoning Ordinance. Adding a single post to hold a new roof at the same 0.5-foot setback as the existing structure is a functional necessity; and granting the requested variance from 20 feet to 8 feet will not be an unreasonable circumvention of the Zoning Ordinance because functionally, Ross Avenue is similar to an alley on the applicant's side of the street. Additionally, the garage will not be visible to the street because of the existing privacy fence.
- c. The existing location of the historic garage, the existing privacy fence on Ross Avenue, and the fact that Ross Avenue partially functions as an alley are all unique circumstances that justify the requested variances.
- d. Strict application of the Zoning Ordinance would require that the roof be completely redesigned, which may result in a less aesthetically pleasing and awkward building; and would likely result in any addition to the garage being prohibited. The applicant has already invested much in the design and approvals for this addition through the Board of Architectural Review, which approved the proposed addition on 2/13/2014.
- e. The requested variance is not a willful violation of the Zoning Ordinance, but rather a design response to the unique circumstances of this property, and a natural outcome of the standard permitting review process.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan and application, allowing minor modifications, if required, by the Divisions of Historic Preservation; Engineering; Traffic Engineering; or Building Inspection as a part of the normal permitting procedures.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the garage expansion prior to construction.

Representation – Mr. Peter Tate, appellant, was present; and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

*Note: At this time, Mr. Griggs stated that he needed to recuse himself from the case due to the applicant being a friend of his.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer, and carried 4-0 (Stumbo absent; Griggs recused) to approve **V-2014-19: PETER TATE** – an appeal for variances to reduce: 1) the required side yard from 18 inches to 6 inches; and 2) the required rear yard from 20 feet to 8 feet, in order to build an addition on the rear of a detached accessory structure (garage) in a High Density Apartment (R-4)/Historic Overlay (H-1) zone, within the defined Infill & Redevelopment Area, at 101 Hampton Ct., for the reasons recommended by the staff and subject to the two conditions.

2. **V-2014-22: MELISSA BALL** – appeals for a variance to reduce the required front yard from 300 feet to 140 feet in order to replace an existing tenant home in the Agricultural Rural (A-R) zone, at 5837 Jacks Creek Pike (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance will not cause a negative effect on the subject property or surrounding properties and will not cause a public health, safety or welfare problem. The proposed placement of the tenant home will actually increase the personal safety and welfare of the farm by keeping a presence at the farm entrance. Furthermore, it will not alter the character of the general vicinity, as there is already a tenant home in this location, and many other properties in this stretch of Jacks Creek Pike have established setbacks in the 100' to 200' range (including Raven Run).
- b. This request for a variance is not an unreasonable circumvention of the Zoning Ordinance but, rather, a logical outcome of the unique circumstances that prompted the original farm owners to build a tenant home at this location many decades ago. For instance, a principal dwelling unit would be allowable at this location, without the need for a variance.
- c. The existing location of the tenant home, the existing location of the functioning septic system, the existing ponds, the soils, the topography, and the nature of the agricultural operation are all unique circumstances of this farm that justify the requested variance.
- d. Strict application of the Zoning Ordinance would require that the new tenant home be moved to a less desirable location on the farm and will require costly solutions to deal with the loss of the functioning septic system currently in use by the existing tenant home, which would cause them a hardship.

- e. The requested variance is not a willful violation of the Zoning Ordinance. Rather, it is in response to the unique circumstances of this property. No construction has begun and the applicant learned of the need for this variance during the normal building permit process.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan and application, allowing minor modifications, if required, by the Divisions of Engineering; Traffic Engineering or Building Inspection as a part of the normal permitting procedures.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the residence prior to construction.

Representation – Ms. Melissa Ball, appellant, was present; and she indicated that she had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Mr. Meyer, seconded by Ms. White, and carried unanimously (Stumbo absent) to approve **V-2014-22: MELISSA BALL** – an appeal for a variance to reduce the required front yard from 300 feet to 140 feet in order to replace an existing tenant home in the Agricultural Rural (A-R) zone, at 5837 Jacks Creek Pike, for the reasons recommended by staff and subject to the two conditions outlined by staff.

3. **V-2014-24: GARY A. HUFF** – appeals for a variance to reduce the required front yard from 10 feet to 8 feet in order to construct a deck, in a Two-Family Residential (R-2) zone, within the defined Infill and Redevelopment Area, at 735 West High Street (Council District 2).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; nor will it alter the character of the neighborhood. The second-story deck will not infringe on the use of the right-of-way of either the subject property or surrounding properties, and it will not be out of character, as other adjoining properties have similar rear decks.
- b. Granting the requested variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because of the unique circumstances of this lot compared to those surrounding it, including the underground utilities that necessitate the need for the additional 2- foot variance.
- c. The configuration of the street at the back of the property, the topographic difference between the street and the second-story deck, the utility easement on the property, and the fact that there is no developable land on the other side of the street are all special circumstances that contribute to justifying the requested variance.
- d. Strict application of the Zoning Ordinance will either deny the applicant the ability to place a functional second-story deck on the rear of the property or will require extremely expensive utility relocations. The two lots that make up this one duplex are the only two properties of the seven that have access to Ty Court and that do not have a second-story deck.
- e. The need for the variance was recognized during the normal permitting process for the deck. There is not any willful violation of the Zoning Ordinance associated with this request.

This recommendation of approval is made subject to the following conditions:

1. The applicant shall obtain all necessary encroachment agreements from the utility companies and Urban County Government prior to obtaining a building permit for the deck.
2. The applicant shall obtain all necessary permits from the Division of Building Inspection for the deck.
3. An administrative action plat shall be filed in accordance with the requirements of the Division of Planning, reflecting the action of the Board.

Representation – Mr. Gary Huff, appellant, was present; and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (Stumbo absent) to approve **V-2014-24: GARY A. HUFF** – an appeal for a variance to reduce the required front yard from 10 feet to 8 feet in order to construct a deck, in a Two-Family Residential (R-2) zone, within the defined Infill and Redevelopment Area, at 735 West High Street, based on the staff's recommendation of approval and subject to the three conditions.

4. **V-2014-25: SUZANNE FROELICH** – appeals for a variance to reduce the required side yard from 3 feet to 1.5 feet in order to allow a heat pump to be located in the side yard in a Single-Family Residential (R-1E) zone, at 4520 Windstar Way (Council District 9).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem. It will not be out of character with the existing neighborhood, as some of the properties in this neighborhood do have HVAC units in the side yards, due to those yards being greater than the minimum requirement of 3 feet. In particular, there will be a total of 15 feet between the subject house and the neighboring house, with the larger 10-foot side yard on the neighboring property, well in excess of the minimum 6 feet of separation required by the Zoning Ordinance.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance, as there will be no other obstructions in the side yard; and maneuverability and accessibility around the heat pump unit will not be compromised.
- c. The existing 5-foot side yard on the subject property, in conjunction with the 10-foot side yard on the neighboring property, creates a unique circumstance that justifies the requested variance for the relocation of the heat pump.
- d. Strict application of the Zoning Ordinance would require the HVAC unit to remain in place or for the applicant to find an alternative compliant location elsewhere on their property, which may not be possible or practical.
- e. The requested variance is not a willful violation of the Zoning Ordinance, but rather is a design response to the unique circumstances of this property.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan and application, allowing minor modifications, if required, by the Division of Building Inspection as a part of the normal permitting procedures.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the HVAC relocation prior to that being done.
3. No other obstruction, including a fence, will be allowed in this 5-foot side yard.

Representation – Ms. Suzanne Froelich, appellant, was present; and she indicated that she had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Ms. White, seconded by Mr. Glover, and carried unanimously (Stumbo absent) to approve **V-2014-25: SUZANNE FROELICH** – an appeal for a variance to reduce the required side yard from 3 feet to 1.5 feet in order to allow a heat pump to be located in the side yard in a Single-Family Residential (R-1E) zone, at 4520 Windstar Way, as recommended by the staff and subject to the three conditions as recommended by the staff

5. **V-2014-26: J & R CONSTRUCTION** – appeals for a variance to reduce the required side yard from 10 feet, 3 inches to 5 feet, 4 inches in order to construct an addition to an existing residence in a Single-Family Residential (R-1C) zone, at 298 Lafayette Parkway (Council District 11).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem. It will allow a modest addition to the existing home in such a way that the existing setback is maintained. Furthermore, it will not be out of character with properties in the general vicinity, as some (but not all) of the surrounding properties also appear to have existing 5'-6' side yards.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance. The proposed addition will simply connect the existing home to its garage, allowing a new master suite that is designed to help the resident(s) age in place.
- c. The existing location of the house and garage (in particular, the location of the existing plumbing) and its age compared with that of the Zoning Ordinance, are unique circumstances that justify the requested variance.
- d. Strict application of the Zoning Ordinance would require that the proposed addition be built in an area of the lot that would be more expensive due to the additional plumbing needed, and would have the undesirable effect of making garage access and yard maintenance more difficult.
- e. The requested variance is not a willful violation of the Zoning Ordinance, but rather a design response to the unique circumstances of this property, that were determined during the normal building permit process.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan and application, allowing minor modifications, if required, by the Divisions of Engineering or Building Inspection as a part of the normal permitting procedures.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the residential addition prior to construction.

Representation – Mr. James Mathews and Ms. Nancy Christiano, owners of the property, were present; and they indicated that they had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously (Stumbo absent) to approve **V-2014-26: J & R CONSTRUCTION** – an appeal for a variance to reduce the required side yard from 10 feet, 3 inches to 5 feet, 4 inches in order to construct an addition to an existing residence in a Single-Family Residential (R-1C) zone, at 298 Lafayette Parkway, for reasons recommended by staff and subject to the two conditions outlined by staff.

6. **V-2014-27: BIG BLUE RENTALS, LLC** – appeals for a variance to reduce the required front yard from 20 feet to 9 feet in order to gain two additional parking spaces for a multi-family dwelling, in a High Rise Apartment (R-5) zone, within the defined Infill and Redevelopment Area, at 145 Transcript Avenue (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem. In particular, the additional parking spaces and their required landscaping will not cause a sight triangle problem for the subject or neighboring properties.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance. Allowing two additional parking spaces will make this property compliant with the current minimum off-street parking requirement of the Zoning Ordinance, based on the number of bedrooms provided in this apartment building.
- c. The non-compliance with the current minimum required parking and the existing layout of this residential development are the special circumstances that are applicable in this case.
- d. Strict application of the Zoning Ordinance would require the property to remain non-compliant with regard to the number of off-street parking spaces provided, and continue the hardship he has experienced in fully leasing these six dwelling units.
- e. This request is not a result of the actions of the applicant, nor should they be considered a willful violation of the Zoning Ordinance. The configuration of the development, with the apartment in the rear of the lot and a parking lot in the front, has existed for many years. It was created prior to the current property owner's involvement. The need for the variance was only recognized during the applicant's request for a permit to pave the additional spaces.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan and application; allowing minor modifications, if required, by the Divisions of Engineering; Traffic Engineering; or Building Inspection as a part of the normal permitting procedures.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a paving permit for the parking expansion, prior to construction.
3. The additional parking spaces shall be fully landscaped as required by Article 18 of the Zoning Ordinance.

Staff Comments – At this time, Mr. Emmons announced that the staff had received one email (from Ms. Kathryn Walton) regarding this case, requesting postponement, but the email did not state the reason. He said that he was aware that the applicant and Ms. Walton had spoken prior to the hearing and the applicant could probably speak on this matter.

Representation – Mr. Matt Jones, appellant, was present; and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Mr. Jones stated that he received the call from Ms. Walton and spoke to her in reference to another variance that was requested a few weeks ago to tear down a house and build a six-unit, one-bedroom apartment building on that lot; and Ms. Walton was concerned about that because of the water run off: He said so she was confusing his property (which is down the street) with another one. Mr. Jones then said that he received a phone call from Ms. Walton's nephew shortly thereafter, apologizing, and said that they did not have any objections to his request.

Action – A motion was made by Mr. Glover, seconded by Ms. White, and carried unanimously (Stumbo absent) to approve **V-2014-27: BIG BLUE RENTALS, LLC** – an appeal for a variance to reduce the required front yard from 20 feet to 9 feet in order to gain two additional parking spaces for a multi-family dwelling, in a High Rise Apartment (R-5) zone, within the defined Infill and Redevelopment Area, at 145 Transcript Avenue, for the reasons stated by the staff in their report and subject to the three conditions recommended by the staff.

7. **V-2014-28: DJUAN WHITE** – appeals for a variance to reduce the required front yard from 30 feet to 3 feet in order to construct a front porch, in a Two-Family Residential (R-2) zone, within the defined Infill and Redevelopment Area, at 466 Roosevelt Blvd. (Council District 2).

The Staff Recommends: Approval of a variance from 30' to 5', for the following reasons:

- a. Granting the modified variance should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem. In particular, had the vacant properties on either side of the subject property been built with a residence at the previously allowable 15' building line, a variance would not be necessary for the subject property to build a covered porch that projects 8' closer to the street.
- b. Granting this variance will not be an unreasonable circumvention of the Zoning Ordinance, because most homes in this neighborhood have similar porches at a similar setback to Roosevelt Boulevard.
- c. The fact that this property is surrounded by vacant properties and not able to utilize the inherent averaging provisions of the Infill & Redevelopment regulations, along with its existing concrete pad, are special circumstances that apply in this case.
- d. Strict application of the Zoning Ordinance would require the property to remain without a front porch, which would be out of character with the neighborhood.
- e. This request is not a result of the actions of the applicant, nor should they be considered a willful violation of the Zoning Ordinance. Construction has not begun on the covered porch, and the need for the variance was recognized during the building permit review process.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan and application (amended to allow a 10' deep front porch) allowing minor modifications, if required, by the Division of Building Inspection as a part of the normal permitting procedures.
2. All necessary building permits shall be obtained by the applicant, prior to construction.

Staff Comments – Mr. Emmons announced that the staff recommended approval of “most” of the variance that was requested by Mr. White; the request was from 30 feet to 3 feet, and staff is recommending approval of a variance from 30 feet to 5 feet.

Representation – Mr. DJuan White, appellant, was present; and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Board Questions – Mr. Griggs stated that in the staff report, before the last recommendation, it was stated that the applicant would be willing to accept an 8-foot porch: He said that he was a little confused as to whether this proposal was for a porch of 11 feet, 10 feet, or actually one of 8 feet. Mr. Emmons said that it was written based on a conversation that he had with Mr. White earlier on in the process; but the setback and variance are written in terms of the setback from the right-of way, and Mr. White was concerned as to how far his porch could come out from his house. He said that is the reason why there were so many numbers being discussed. He went on to say that Mr. White's house is essentially 15 feet back from the right-of-way, and a 5-foot variance would allow a 10-foot deep porch; Mr. White is asking for an 11-foot deep porch, which would require a variance to the original 3 feet that he requested.

Mr. Griggs then asked about the roof overhang- if that is what is being measured from. Mr. Emmons replied affirmatively.

Ms. Meyer then asked if the variance was being requested from 30 feet to 3 feet or 4 feet. Mr. White said that his biggest concern was the over hang, but he would like the porch to be at least 10 feet deep.

Mr. Glover said that it sounded like it was neither 5 nor 3 feet. Mr. Emmons stated that a variance to 4 feet will allow the applicant to build what he wants to build. Mr. Glover then asked Mr. White if he understood what was said. He said that what Mr. White was concern about was the measurement from his house to the end of his proposed porch; regarding the regulations, the restrictions are from the street to the edge to

the furthest reach of his (Mr. White's) porch. He said that it is the same thing, but it is just measured from a different distance; if given a 4-foot variance, it would satisfy a 1-foot distance from his house. Mr. White stated that he understood.

Ms. Moore asked the staff if they thought there would be a significant difference between a variance of 3 feet and 4 feet. Mr. Sallee said that they did not see a significant difference. He said that the findings A-E would be satisfactory for a 5 foot variance or a 4 foot variance, and he then presented the two changes discussed by the Board on the overhead projector.

Action – A motion was made by Mr. Griggs, seconded by Mr. Griggs, and carried unanimously (Stumbo absent) to approve **V-2014-28: DJUAN WHITE** – an appeal for a variance to reduce the required front yard from 30 feet to 4 feet in order to construct a front porch, in a Two-Family Residential (R-2) zone, within the defined Infill and Redevelopment Area, at 466 Roosevelt Blvd, based on the staff's recommendation and subject to the two conditions; where the first condition is modified to allow 11-foot deep front porch (which is not the porch size, but the total distance to the outside edge of the roof overhang), and subject to the following revised conditions:

1. The property shall be developed in accordance with the submitted site plan and application (amended to allow a 11' deep front porch) allowing minor modifications, if required, by the Division of Building Inspection as a part of the normal permitting procedures.
2. All necessary building permits shall be obtained by the applicant, prior to construction

8. **V-2014-29: PATRICK B. & LISA A. SMITH** – appeal for variances to: 1) reduce the required front yard along Chenault Road from 30 feet to 15 feet in order to build an in-ground pool; and 2) to increase the maximum height of a fence in the front yard from 4 feet to 6 feet in a Single-Family Residential/Neighborhood Design Overlay (R-1C/ND-1) zone, at 138 Chenault Road (Council District 5).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the subject or surrounding properties and will not cause an issue regarding public health, safety or welfare. In particular, the fence height variance will not cause a sight distance problem for the subject or surrounding properties; and the unique shape of this lot necessitates that the large front/side yard of this property be used as other properties traditionally use their rear yards.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance. The rather large front/side yard serves the purpose of a traditional rear yard for most properties.
- c. The unusually odd shape of this lot, and the fact that 75% of the proposed fence is allowed to be at the requested height, are significant and special circumstances that apply in this case.
- d. Strict application of the Zoning Ordinance would require the property owners to either design a much smaller pool or undertake an expensive sewer line redirection project to build a pool within the required setbacks.
- e. This request is not a result of the actions of the applicant, nor should they be considered a willful violation of the Zoning Ordinance. Construction has not begun on the pool, and the need for the variance was recognized during the building permit process.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan and application; allowing minor modifications, if required, by the Divisions of Engineering or Building Inspection as a part of their typical and normal permitting procedures.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a fencing permit and a building permit for the pool, prior to construction.

Representation – Mr. Patrick B. Smith, appellant, was present; and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Ms. Meyer, seconded by Ms. White, and carried unanimously (Stumbo absent) to approve **V-2014-29: PATRICK B. & LISA A. SMITH** – an appeal for variances to: 1) reduce the required front yard along Chenault Road from 30 feet to 15 feet in order to build an in-ground pool; and 2) to increase the maximum height of a fence in the front yard from 4 feet to 6 feet in a Single-Family Residential/Neighborhood Design Overlay (R-1C/ND-1) zone, at 138 Chenault Road, for reasons recommended by staff and subject to the two conditions outlined by staff.

9. **V-2014-18: MITCHELL CONSTRUCTION MANAGEMENT** - appeals for a variance to reduce the required side yard from 17.5 feet to 10.5 feet in order to expand a detached garage in a High Density Apartment (R-4) zone, within the defined Infill & Redevelopment Area, at 125 E. 4th St. (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem. It will allow a car to be parked in the garage, and will lessen the chances that one will be parked in the driveway because there will be less room for parking without blocking the sidewalk.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance. Adding 4' in length to the garage will make it useable by modern day standards, allowing vehicles to be parked entirely inside the structure. Additionally, had the garage been an attached structure (rather than detached as it has been for at least 80 years), it would not have required any variances.
- c. The existing location of the historic garage and the increased safety of parking a vehicle in the garage are unique circumstances that justify the requested variances.
- d. Strict application of the Zoning Ordinance would require that the non-conforming accessory structure remain as it has been historically, or that the applicant build an unwanted addition between the historic home and the accessory structure.
- e. The requested variance is not a willful violation of the Zoning Ordinance; rather, it is a design response to the unique circumstances of this property that were determined after a building permit had originally been issued. The applicant is seeking the proper regulatory relief so that they can re-apply for a building permit and continue the construction that they began earlier this year.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan and application, allowing minor modifications, if required, by the Divisions of Engineering; Traffic Engineering; or Building Inspection as a part of the normal permitting procedures.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the residence prior to construction.

Representation – Mr. Mike Mitchell, appellant, was present; and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Mr. Griggs seconded by Mr. Glover, and carried unanimously (Stumbo absent) to approve **V-2014-18: MITCHELL CONSTRUCTION MANAGEMENT** – an appeal for a variance to reduce the required side yard from 17.5 feet to 10.5 feet in order to expand a detached garage in a High Density Apartment (R-4) zone, within the defined Infill & Redevelopment Area, at 125 E. 4th St., based on the staff's recommendation and subject to the two conditions; to include the required sideyard from 1.5 feet to 0 feet in order to expand said garage as explained in the revised staff report.

Staff Comment – Mr. Emmons said that there was missing information on the agenda. He stated that the information on the agenda is from the old staff report; there is a second side-yard variance that was on the revised staff report in the Board's packet. There are two sideyard variances that are being requested; and staff is recommending approval of both; the first sideyard variance was from 17.5 feet to 10.5 feet; and the second was to reduce the sideyard from 1.5 feet to 0 feet, in order to expand the detached garage; the staff is recommending approval of both side-yard variances for the reason listed in the revised staff report, subject to the conditions that are in the revised staff report.

10. **V-2014-23: SOLOMON VAN METER** – appeals for variances to: 1) reduce the front yard from 8 feet to 0 feet; 2) reduce the rear yard from 6.05 feet to 3 feet; 3) reduce each side yard from 8 feet to 6 feet; and 4) increase the maximum allowable driveway width from 10 feet to 24 feet in order to replace an existing duplex with a single-family residence in a Highway Density Apartment (R-4) zone, within the defined Infill and Redevelopment Area, at 139 Bruce Street (Council District 2).

The Staff Recommends: Postponement, for the following reason:

- a. A postponement will allow the applicant time to further investigate a possible design solution that allows the desired double garage but also addresses pedestrian safety.

Staff Comment - Mr. Sallee stated that the applicant was not present; however, he was able to contact him by phone. He said that Mr. Van Meter stated that he did receive the agenda and staff report and understood that the staff was recommending postponement; he and his architect had hoped to get

revised information to staff this week since receiving the report, but was unable to do so. Mr. Sallee said that Mr. Van Meter said that he was okay with a one-month postponement. Mr. Sallee said that his expectation is that staff will receive revised information on the application within the next month. He said that Mr. Van Meter apologized for not being present.

Action – A motion was made by Mr. Glover seconded by Ms. Meyer, and carried unanimously (Stumbo absent) to postpone **V-2014-23: SOLOMON VAN METER**, based on the staff's explanation, until the May 30, 2014 meeting.

D. **Conditional Use Appeals**
(Sounded Items)

1. **C-2014-12: FOTIOS MORAITIS** - appeals for a conditional use permit to establish a pawn shop (including vehicles) in a Highway Service Business (B-3) zone, at 1536 (aka 1538) N. Limestone (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. If the recommended changes are completed by the applicant, then granting the requested conditional use permit should not adversely affect the subject or surrounding properties and, in fact, will have a positive effect by increasing both pedestrian and vehicular safety over the existing non-compliant parking situation.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted application and a revised site plan, as noted below.
2. All permits, including but not limited to a Zoning Compliance Permit, Right-of-Way Encroachment Permit, Building Permit, Paving Permit, and Certificate of Occupancy, shall be obtained by the applicant from the Divisions of Planning, Building Inspection, & the Department of Public Works prior to construction.
3. The parking lot shall at all times be maintained to meet the minimum requirements for landscaping and lighting in the Zoning Ordinance.
4. The sidewalk/median along North Limestone shall be enlarged and an accessible sidewalk installed in accordance with the staff exhibit on file; or as amended by the Department of Public Works as a normal part of the Right-of-Way Encroachment permitting process.
5. The front parking lot shall be re-stripped to establish a minimum of 75-degree angled parking, with a one-way drive aisle in accordance with the staff exhibit presented to the Board; or as amended by the Department of Public Works as a normal part of the Right-of-Way Encroachment or Paving permitting processes.
6. The rear parking lot on the subject property shall have wheel stops installed to delineate enough parking spaces to meet the minimum required parking for all uses on the subject property.
7. Landscaping shall be installed on the northern half of the property to meet the minimum requirements of vehicular use area screening required by Article 18 of the Zoning Ordinance.
8. Storage shall be maintained only as an incidental or accessory use to the principal use of the pawnshop.
9. The applicant shall have 4 months to obtain the necessary permits, and complete construction prior to receiving a final Zoning Compliance Permit for this use. If the conditions are not complied with within this time period, the conditional use will be re-docketed for the next available meeting for further review by the Board.

Representation – Mr. Fotios Moraitis, appellant, was present; and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Ms. White seconded by Mr. Glover, and carried unanimously (Stumbo absent) to approve **C-2014-12: FOTIOS MORAITIS** – an appeal for a conditional use permit to establish a pawn shop (including vehicles) in a Highway Service Business (B-3) zone, at 1536 (aka 1538) N. Limestone, as recommended by staff and subject to the conditions as recommended by staff.

E. **Conditional Use Appeals**
(Discussion)

1. **C-2014-14: BILL MEADE** - appeals for a conditional use permit to operate an outdoor recreational facility

(a botanical garden) in the Agricultural Rural (A-R) zone, at 9086 Old Richmond Road (Council District 12).

The Staff Recommends: **Postponement**, for the following reasons:

- a. There is a pending Zoning Ordinance Text Amendment designed to provide greater clarity in the regulation of all outdoor recreational activities, in the A-R zone and all others. The staff strongly prefers that the current application for a Conditional Use Permit postpone until the ZOTA has been fully considered by the Commission, and ultimately, by the Urban County Council.
- b. The staff can not report to the Board that all necessary facilities are available and adequate to serve the requested conditional use permit. In particular, the majority of off-street parking proposed to serve this use is located more than ¼ mile south of the proposed zoological garden, requiring patrons to cross a federal highway, and climb a 65' slope to reach the facility. There appears to be space available on the subject property for more vehicular parking than is proposed by the appellant.

Representation – Ms. Chris Westover, attorney for the appellant, was present.

*Note – There was a brief discussion as to whether or not the Vice-Chair would be able to continue to chair this case or vote due to not being present at the last hearing, and did not have much information on the case. Ms. Jones stated that it would be okay for Vice-Chair Moore to continue to chair the hearing, and it would be at her discretion as to whether or not to vote.

Staff Report – Mr. Sallee said that staff had received some revised information from the applicant, which was forwarded to the Board members the week prior. He said this includes a revised site plan, revised justification, and a revised scope of activity. He also said that the staff did not revise the staff report.

As Mr. Sallee presented photos on the overhead, he said at the last month's hearing, there were a number of photographs shown of the entrance to the property at Old Richmond Road, which is in very close proximity to the bridge over the Kentucky River that leads to Madison County (shown on site plan on the lower left corner). He stated that the revisions that were reviewed by staff in the past month were highlighted and labeled on the exhibit. Mr. Sallee pointed out four new gravel parking spaces that were shown on the revised site plan, which was now being proposed at the end of the driveway, in close proximity to the barn, which is the largest structure on the property. Those spaces are behind the barn. He stated that the existing parking spaces that were presented at last month's hearing are still on the plan (that has not changed); however, almost everything from that point forward, down the driveway, had been changed. Mr. Sallee continued to describe the revised site plan for this case, noting that the staff did not revise the staff report because the text amendment is still pending review by the Planning Commission.

He said that staff had prepared some possible findings the previous month, with the expectation that the applicant would not agree to a postponement to have their application line up with the other process that is ongoing. He said what staff had done was highlight the changes that had been made to the findings, and either crossed out or underlined the new language from what was presented last month.

Board Questions – Mr. Glover expressed his interest as to what text amendment had been proposed that might affect the application. Mr. Sallee said that, generally, recreational uses have been studied for about 2 ½ years (locally): There is a broad-reaching text amendment that has not yet been scheduled for a hearing, but has been worked on in the past couple of years; primarily, it will provide a lot more specificity to a class of conditional uses that are called "outdoor" and "indoor" recreational uses.

Mr. Glover asked, if the case was denied during the hearing and the text amendment passed, if it would mean there would be no need for a conditional use. Mr. Sallee responded that he wasn't sure about the conditional use; however, the likely result would be after the one-year waiting period, under the by-laws for a new application, it was possible that there would be a new set of requirements for this class of conditional use. Mr. Griggs then asked for an example. Mr. Sallee said that parking ratios and limitations on outdoor parts of the current application were two examples.

Ms. Moore then asked; if the application was disapproved and then there is a zone change, if it would still be required to wait a full year; or if it would be considered a different application since it would be a different zone? Mr. Sallee stated there has been no talk about a zone change being required for this proposed use.

Mr. Griggs then asked if the applicant would be subject to the conditions in the alternate action #2 if approved. Mr. Sallee responded affirmatively.

Mr. Glover then asked what the particular concerns were; if they were parking, emergency services, utilities,

or facilities. Mr. Saltee stated it was a broader question than just with the subject application. He said that he thought that the staff was reviewing all of these uses that are falling under this ordinance revision in this type of fashion; so it is mostly about scope and the uncertainty of what the end result of the final ordinance may be.

Mr. Griggs asked if Mr. Saltee was talking about the uses in this application that are not currently found in the A-R zone, or that are very rarely found in the A-R zone, such as weddings and receptions. Mr. Saltee replied affirmatively. Mr. Griggs then asked if it would be precedent-setting if approved. Mr. Saltee said that it is possible that it would be.

Mr. Glover asked, if the application was approved, if the conditional use would run with the applicant or the land. Mr. Saltee said it would depend on condition #9 and the draft that was presented to the Board. He noted that there was a change from what was presented at the prior month's hearing.

Ms. Moore asked legal counsel if there was any thought as to how the Board can or cannot be bound by the fact that there is a pending zone change. Ms. Jones stated that it is not a zone change; but it is a text amendment, which would more than likely clarify uses in the A-R for recreational purposes. She went on to say that because of its timing, there is a push to have this put on hold until the text amendment is moved forward and adopted; however, she didn't think that could be a basis for not approving something because it is not the law; the law today is what is in the ordinance as of now, and that is what they applied under.

Mr. Glover asked how long the text amendment has been under consideration by the government. Mr. Saltee said it started in October of last fall. Mr. Glover asked if Mr. Meade had applied for a conditional use a year ago, if the text amendment would be a part of the question. Mr. Saltee replied that he wasn't sure if that would have been the case; but the staff may have made the same recommendations. Ms. Jones added that it would have been in the Vice-Mayor's task force at that point in time.

Mr. Glover stated that he didn't like having an application postponed because the government "might" come up with some condition or restriction; it should be voted up or down and should be based on what comes out in the hearing. Mr. Saltee said that is why staff provided findings to the Board for either scenario.

At this time, questions were raised from the Board about the proposed parking across the road from Mr. Meade's property. Mr. Glover asked if the parking issue was part of the staff's objection. Mr. Saltee said that it was. Mr. Glover also asked if the modification had affected the staff's recommendation. Mr. Saltee stated that it had not. He went on to say that staff thought there may be some possibility that the parking will still be used; and in talking with the applicant's representatives, staff believed that instead of using the parking across the road, that the area down the hill would be more likely used. Apparently it had been used in the past and it has no gravel or pavement. Vice-Chair Moore asked if that is what staff was referring to as the possible 65-foot elevation difference to reach the facility. Mr. Saltee stated it was.

At this time, Ms. Moore asked if there were any other questions or comments from the staff or Board members. There was no reply.

Applicant Representation – Ms. Chris Westover, attorney for the applicant, said that she had with her Mr. Kevin Warner with Carman and Associates. She referred to the questions from the prior month's hearing regarding the parking issue. Ms. Westover stated that as a part of the recreational text amendment, there was talk among the staff and committee to have the old B-3 parcels in the Rural Service Area used for something that would conjoin with an agricultural use, so there would be minimal impact on the A-R zone property; therefore, they thought it would appropriate to use the "Rip Tide" parking lot across the road, which is zoned B-3. She then said that they will not be doing that; all the parking will be on site. She advised that a new site plan would be submitted to the Board that would show that.

Ms. Westover said that they have met with the Planning staff and Traffic Engineering. She said that there was one letter (not in objection), from the neighborhood, requesting more information on the proposal; and since then, Mr. Meade had met on more than one occasion with that neighbor.

At this time, Ms. Westover distributed a copy Mr. Meade's business plan to the Board. As she did so, Mr. Griggs asked her about the letter of concern. She indicated that it was the Neighborhood Association President, writing on behalf of the Neighborhood Association. Ms. Westover stated that the letter that was written (which was actually an email) stated that there weren't objections at this stage, but the writer of the email said she needed more information to make an assessment of where the matter stood. She stated that Mr. Meade had met with her.

She went on to say that she wanted to address the Board's concern of exactly what the proposal is explaining that this is primarily a Botanical Garden.

Ms. Westover noted that the narrative (business plan) she handed out specifies that there will not be large crowds; at the most there will be 100 people. She said that all of it is accessory and subordinate to the main use, which is the gardens themselves.

Ms. Westover presented a video of the proposed gardens, to show that this has been in a work in progress for years, not that it is something that they want to do. Ms. Westover said that the Meades mainly want to use the garden as a showcase, and the main purpose is to preserve and protect this very unique spot. She went on to say that they want to do a limited number of events, such as a wedding or other some such event. She said, as the narrative shows, the number of people would be limited. The number of occasions would be limited as well, due to trying to keep the grounds from being ruined; so by design, this is intended to be a very low impact type of use. She also said that in the narrative, it says there will be no sale of food, merchandise. There will be no outdoor music and no amplification.

She said that after last month's hearing, the Meades engaged in a dialogue with the representative from the Neighborhood Association. The questions of concern were addressed by Mr. Meade, and Ms. Westover said she believed they were resolved.

Ms. Westover stated that the purpose of the application is to allow the Meades to have some income in order to help maintain the garden. She then spoke on the text amendment concerns and presented information (that she had obtained) to the Board and staff.

Mr. Meade, at this time, spoke about his meeting with the Neighborhood Association approximately 2 weeks prior to the hearing. He said that and he had addressed their concerns, and they seemed to be satisfied with his answers. He stated he would be glad to answer any questions that the Board or staff may have for him.

Ms. Meyer asked about the small number of events of up to 100 people that were listed in Mr. Meade's business plan. She said that she knew about the concern of the foot traffic and asked if he anticipated a couple of large events a month. She asked if he had thoughts in mind as to how he was going to control it. Mr. Meade stated that he only wants a limited amount of guests to help with cash flow to continue to maintain the garden. He indicated that he was also willing to try it out for a year and come back for a review to show how important this proposal is to him.

Ms. Moore expressed her concern about the first recommended condition on the staff report - that he would be established and would operate in accordance with the submitted site plan and application, which seemed vague. She said that she didn't see anything that limits it. Ms. Meyer then said that she believed that Ms. Moore's point was that the proposed business plan was not as specific as it should be.

Ms. Moore then asked if the small residence would only be used for brides getting ready, etc., as opposed to having persons stay overnight. Mr. Meade responded affirmatively.

At this time, Ms. Moore asked was there any more questions or comments for Mr. Meade.

Board Questions – Mr. Griggs said that he would like to hear more from the staff about the possibility of setting a precedent, noting that it is very worrisome to him to have these large non-Agricultural, commercial uses that have been held at bay in the rural part of Fayette County. He said he was also worried about the specifics- e.g., the number of people and the amplified music, etc. He said that there was not anything that locks this use in so that it's not a disturbance to the area; and the fact that Mr. Meade doesn't live there is of some importance, because it would be the people that are living there who would be affected. Mr. Saltee said that much of what was discussed in the 20+ meetings of the Task Force were topics related to what Mr. Griggs had mentioned. He said before that, there were a couple of other cases that were associated with wineries and ancillary uses that were proposed as part of wineries, such as weddings, social functions, fundraisers etc. All of that has kind of formed the background as to why the text amendment has been reviewed, why it has taken a while to look at, and why the many people that are involved thought there was a need for specificity. In terms of precedent, the period of time that this could possibly be precedential would be the time between the present and the adoption of the text amendment. He said he thought that by the time the text amendment was adopted, there would be another set of regulations that would clearly impact any use like this that may come later. Mr. Griggs then said it is not a foregone conclusion that this type of activity would be an allowable conditional use in the A-R zone. Mr. Saltee said that this is correct; and that it is possible that a zone change-rather than a conditional use permit; might be necessary for this

type of use.

Mr. Griggs asked if the reason for not having a lot of these activities in the A-R zone was because it's generally been accepted that these are not agricultural uses, and not appropriate in the A-R zone. Mr. Saltee said that was correct; and that a lot of the discussion has been as to whether these activities are commercial in nature or if they are more philanthropic.

Mr. Glover asked; if the application was granted, if it would be appropriate to grant the use for a particular period of time (one or two years), and have it expire on its own terms; subject to annual re-approval. He asked if that had ever been done before. Mr. Saltee said that he couldn't recall any time that the Board has done that; it's obviously common for the Board to set a 6-month or an annual review of the use, and even multiple times. Mr. Glover commented that that is usually with the presumption that the conditional use will remain or continue or stay attached to the property; and what he is asking is different. Mr. Saltee said that he would defer to Ms. Jones on that; because he could not remember, in his experience, that the Board has done that and wasn't sure as to whether it could be done or not.

Ms. Moore asked if the applicant was asking for a conditional use permit to operate an outdoor recreational facility, if there is a definition of an outdoor recreational facility. Mr. Saltee said that it is not currently defined in the Ordinance. Part of the text amendment package is that many new definitions would be inserted into the Ordinance. Ms. Moore stated that to her, a wedding is not a recreational activity.

Ms. Westover read a standard dictionary definition of "recreation" and said that she wanted to emphasize that this is not a place for weddings; it is a botanical garden. Any time there is one use, there are subsidiary uses that it is possible to do. She also said that they strongly believe that this particular garden is so unique and so unusual that it is the main interest. Ms. Westover said that among the uses that are being proposed are: art classes, photography classes, seminars for landscaper- that sort of thing. It is to promote this wonderful and unique garden. She said designers sometimes people might want to use it for a wedding or a neighborhood meeting and so on; it just depends on how that is characterized. She said that Mr. Meade has said that he was willing to limit the size and number of events, so it would be very reasonable to try it for a year and then come back to see how things are working out.

She then referred back to Mr. Griggs' question about what type of precedent this would set. Ms. Westover said that what is being dealt with is a conditional use; and under the statute and the ordinance, the definition of a conditional use is one that might be okay in a particular zone; but there are particular issues that are related to it. Therefore, one would have to look at the specific location, and maybe put on conditions to make sure that that use will fit at that particular location in the zone. She said that what she was getting at was that this; on its own, would substantially limit any precedential effect on the use because the analysis would have to be where is this; what the roads; are like, what does it look like, etc. She also said that there were likely very few other properties in Fayette County have been tended this lovingly for this long, with this very unusual aspect. Mr. Griggs said that he would grant that every property in Fayette County is unique; but he could also foresee that a horse farm would come in with a legitimate argument that their pastoral setting, and the woods around the edge, are just as well maintained and unique, and they should be able to have weddings and class reunions. It would be hard to tell them they are much different from this case. Ms. Westover replied that she didn't think they could get what Mr. Griggs was suggesting in under a recreational activity.

Ms. Westover then said that they are very willing to put on conditions to make sure that it is operated in full conformity with what they are trying to do. She also said that she needed to emphasize in the Rural Land, Management Plan, in 1999 when it was adopted, it discussed that in this area, right by the river, is environmentally sensitive; and, in fact, some forms of traditional agriculture aren't conducive to some of the areas because of the steep slopes: If the Meades wanted to turn it into an agricultural property, they could graze it with livestock, and they could crop it; but just a look at the topographical and other constraints shows that this land is much better for its current use as a passive garden than it would be for any agricultural use. She continued, noting that this use is a balance - to serve this unique area that has environmentally sensitive areas, it allows a low intensive use at this location, it will not cause a disturbance to any of the other neighbors, and it will not impair the integrity of the agricultural area.

At this time, Ms. Westover asked Mrs. Meade to speak to the Board.

Mrs. Nancy Meade, wife of Mr. Bill Meade, read a statement that she had written and presented to the Board prior to the meeting.

Ms. Westover, After Mrs. Meade's statement, said that there were questions about the site plan. She said

that Mr. Kevin Warner was present, and would like for him to go over the site plan and explain how all of the parking would be entirely on the site.

Mr. Kevin Warner, landscape architect, presented an enlarged copy of the site plan. He said that, as noted previously, the parking in the rear was to be for employees; however, it could be used for caterers, or as overflow. He said that the parking that was added in the front was designed to be low impact so that it does not create additional runoff; it preserves the greenery of the natural environment that they are trying to protect with the development. The number of parking spaces would be based upon the same type of requirement that would be for other facilities where there might be gatherings. He mentioned that there is opportunity for overflow parking behind the barn; and Mr. Meade is willing to gravel the parking back there, if necessary.

Ms. Westover then returned to the podium and said that that concluded their presentation, and then presented some letters of support to the Board (which were also handed out at the prior hearing). She said that the letters of support are from people who have a very strong and passionate interest in preservation of our Bluegrass resources.

It was her belief that they have met all of the requirements of the Ordinance; they should not be held waiting for some point in the future, when the law may or may not change; and the evidence in the record supports what they are asking to do.

Ms. Westover said, in light of Mr. Meade's comments, that they are more than willing to limit the size and number of events. She also asked about amplified music; i.e., what if one has a guitar and there is some amplification in the barn. She said that Mr. Meade was willing to have a condition imposed that would limit any type of loud sounds (i.e., outdoor loud speakers), and to limit amplification of the type of music that would be considered a nuisance to the neighbors. Ms. Westover also said that they would be happy to agree to conditions limiting the size and number of events, requiring a one-year review; and a limitation of the conditional use to Mr. Meade and his family so that when the property no longer is in the family, it would expire. She mentioned Mr. Glover's earlier question about the conditional use terminating after a certain period. She said that there is little authority in the law to do that. It would be difficult to do unless it was for a one-time event, as opposed to terminating if the law changes, and she was not sure that there would be the authority to do that.

At this time, Mr. Glover said that he would like to hear from the Law Department on this matter. Ms. Jones said that she couldn't think of any instances where this had ever been done. She then read a part in the Ordinance explaining how a conditional use applies.

She said she was having a difficult time, and was not aware of any authority, as to how the Board could look at a certain situation and a certain circumstance; place specific conditions on it; and determine that it wouldn't be adverse, but then in two years say that it will be terminated. She said that from a logical standpoint, she didn't know if there would be any authority that would say that, which may be why it hasn't been done. Ms. Jones said that she would suggest, and since the applicant is agreeable, that there be some additional restrictions that would address the things the Board was most concerned about, such as the impact on the property or the surrounding neighborhood.

Mr. Glover asked, if this were granted, what limits the Board might put on the things that were brought up, like the number of events; the number of people; and the number of people per event, etc.- things that are within the scope of their authority. Ms. Jones said that the one thing that is giving her pause is that all conditional uses are reviewed annually; the Board has the authority to place a 6-month review or a 12-month review on any conditional use that is granted; and the theory behind that is, if the conditions get called in on a question or a complaint, the Board has the authority to review that; and it could either be fixed, stopped or the conditional use can be revoked if the conditions aren't being met. She said that she was having a hard time determining the logic of how, if conditions are placed on something and the Board says, "as long as you do these things, this is okay"; and if those conditions are being met, and a time frame has been placed on the use, and then the Board says it must now be stopped; whereas, if conditions are put on the use, and those conditions are not met, then there would be a reason to change something or to stop it.

Mr. Glover asked about the condition that the conditional use would be attached to the property as long as Mr. Meade owns the property. Ms. Jones said that this was correct and had been done before with other cases.

Mr. Glover suggested that if the application was approved, there be some type of limitation placed on the

number of events or the number of people attending an event, plus an annual review. Ms. Meyer said that she wanted to also suggest a condition that specifies no overnight paid guests, and agreed with Mr. Griggs's suggestions as well.

Ms. Moore said that there were two ambiguities: 1) The condition expressly says no loud speakers, and doesn't say no loud speakers except in the barn, and the proposal seemed to be that there would be loud speakers in the barn; and 2) it says no food services permitted. She asked if caterers were not food service. In response, Ms. Westover said that she thought the food service that they were talking about was like going to a ball field (which is a permitted conditional use in the A-R zone), where one can buy food - that is food service; The Meades are not going to say that one cannot bring a sacked lunch, or an apple, or in this case, a caterer, because the caterer would not be preparing food there; they would just be bringing it on site. She said there would be no sales of food on the property.

Ms. Moore then asked about the loud speakers. Mr. Meade said that it is stated in his business plan that there will be no loud speakers because that was the way it was presented to him that there could not be any outside loud speakers. He said that they did not want loud music.

Mr. Meade did ask if there were a guitar player who required a small amplifier, if that would be considered amplified music.

Ms. Meyer asked how this would be defined. Mr. Sallee said that he and Mr. Emmons had just discussed this matter. He thought that if the annual inspection showed that there were speakers mounted to the wall inside the barn, it could be a possible violation; if there were a reception or some type of event, and they had someone with an amplifier for a guitar, etc., he wasn't sure if that would be considered a loud speaker since it is part of an amplifier. Ms. Meyer also asked about a DJ. Mr. Sallee said that would be about the same thing: the DJ would probably bring floor-mounted speakers or some type of system, but they wouldn't be permanently affixed to the facility. Ms. Meyer then asked if they could condition the use that any amplified music must be contained in the barn.

Mr. Griggs then stated that he had not been to any wedding reception where there wasn't a DJ, and he believed that the barn was not insulated or sound proofed; however, the DJs at these receptions have "rattled the walls" until late hours in the a.m.; and his concern was that this is what is being discussed as being okay. He said that he didn't think that the conditions that were being set were in any way limiting that activity.

Ms. Meyer then asked about the set hours. She said that, according to what she was reading, it said weekends until 11:00 p.m.; she asked if that meant everyone would be off the property by 11:00. Mr. Meade said that it was his opinion that 11pm is when it has to be shut down, and then an hour for them to clean up and be gone, would mean people essentially would be there until midnight.

Mr. Meade said that he did not have any problem limiting this to a certain degree. He also said that he had his son's reception there, with a DJ, and did not have any problems because there are no people around them. Mr. Meade said that the only person around his area was his brother on the property beside his property. Mr. Griggs said that there are other people living in that area on River Road; therefore, there would be neighbors that would be impacted by this.

Ms. Meyer then asked about the contract that Mr. Meade had brought up regarding the different events held; clarifying that it would state what people can and cannot do. Mr. Meade replied affirmatively. He said that there were some concerns about this being open to the public, and he stated that is not the case; it is only by reservation and contract.

Vice-Chair Moore asked if there were any more questions or comments from staff or the Board at this time.

Mr. Sallee said that staff had taken notes during the hearing regarding the Board's comments and possible conditions, and would be glad to share that information. He said that there may be other conditions that may be under consideration as well. At this time, he presented his notes on the overhead projector, noting that what he was presenting was at the end of the finding that Ms. Westover had provided to the Board. He pointed out that their condition #4 seemed to be a different wording than what had been provided in staff's condition #9; the key difference was the very last phrase: "by the appellant or a member of his family"; so this condition #4 could substitute for what the staff had provided earlier for #9. He also said that condition #10 was a condition that was not offered by the staff; #11 or #12, were ones that staff had written down the last 10-15 minutes of discussion (regarding #12, staff wasn't sure of the number the Board was considering for that restriction).

Ms. Moore said that if it is approved, she would like to see a condition on the number of people that could attend as well-possibly a limit of 100 people. Mr. Griggs said that he agreed with Ms. Meyer that 50 would be more suitable for the amount of parking and the size of the facility. He also said that he didn't see in the conditions where it talked about the times (hours of operation).

At this time, there was some back and forth discussion between the Board and staff regarding added conditions and findings- e.g., hours of operation, number of events per year, etc.

Mr. Westover said that they were agreeable to all that was referenced because this was in the business plan. She said the difference between the narrative and the conditions were that the narrative is a general statement, but it is part of the site plan and application, but they are agreeable to have the conditions be more specific.

She then said that they were unclear about limiting it to 50 guests, and asked if this was limiting the number of guests or the number of events of more than 50 people, but less than 100. Ms. Meyer said that she was referring to the large events in limiting the number of large events from 50 to 100 guests to one per month.

Mr. Glover said that he was aware that Mr. Meade has had an event of 150 people, and asked if this was what he considered a large event. Mr. Meade replied affirmatively, noting that 100 people was not a large number for a wedding; but more than that would be too many for his property, and would negatively impact the property.

At this time, there was discussion between the Board members and the applicant regarding the limitations on the number of people, number of events per year, and hours of operation.

Action – A motion was made by Mr. Glover, seconded by Ms. White, and carried 4-1 (Griggs opposed; Stumbo absent) to approve **C-2014-14: BILL MEADE** – an appeal for a conditional use permit to operate an outdoor recreational facility (a botanical garden) in the Agricultural Rural (A-R) zone, at 9086 Old Richmond Road, for the reasons stated in the staff exhibit, and subject to the following 14 conditions, as shown on the overhead:

1. The recreational facility shall be established and operated in accordance with the submitted site plan and application.
2. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Division of Planning and Division of Building Inspection prior to opening the facility to the public.
3. The existing septic system shall be enlarged and/or improved, if necessary, in accordance with the requirements of the Fayette County Health Department.
4. The parking lots and driveways shall have parking spaces delineated, including any required handicap parking spaces required under the Americans with Disabilities Act (enforced through the LFUCG Division of Traffic Engineering).
5. The final design of the parking lots, access drives, directional signage, and internal circulation shall be subject to review and approval by the Division of Traffic Engineering.
6. The final design of parking lots, access drives and directional signage shall be finalized, with evidence of such certification provided to the Division of Planning prior to issuance of a Zoning Compliance Permit.
7. Any use of All Terrain Vehicles (ATV's) in conjunction with this conditional use is strictly prohibited beyond the property boundaries of the lot of the subject property (meaning none may traverse or cross Old Richmond Road).
8. Outdoor lighting (other than for security purposes), loud speakers, retail sale of merchandise and restaurants or food service are not permitted. Concessions not involving the on-site preparation of food may be provided in a limited manner, if permitted by the Fayette County Health Department.
9. This conditional use permit shall expire if the facility is no longer owned or operated by the applicant or a member of his family.
10. This permit shall be brought back to the Board for review one year after approval.
11. There shall be no overnight paid guests at this location.
12. There shall be no more than one (1) wedding reception or similar event held at this facility each week, and no more than twenty (20) such events each year, attended by fifty (50) or more persons.
13. All events shall include no more than 100 guests.
14. Available hours – 9 a.m. until 8 p.m. Monday through Thursday; 9 a.m. until 11 p.m. Friday through Sunday.

2. **C-2014-15: TIM HUBER/RAMSEY DEVELOPMENT** - appeal for a conditional use permit to establish an assisted living center for seniors in a Planned Neighborhood Residential (R-3) zone, at 2930 Spurr Road (a portion of) (Council District 2).

The Staff Recommends: **Approval**, for the following reasons:

- a. Although collector and arterial streets do not currently exist to the subject site, the arterial street is expected to be completed by the time construction of the requested assisted living facility is completed. In addition, collector street connections are proposed to be constructed by the applicant and/or the developer by the time this requested conditional use is set to open. Therefore, with these facilities in place, ensuring a connected street system in this area, granting the requested conditional use permit should not adversely affect the subject or surrounding properties, or this residential neighborhood. Adequate off-street parking will be provided on-site for the use of the new building proposed.
- b. With the completion of all necessary local, collector and arterial streets, all public facilities and services would be available and adequate for the proposed use, since this location is "grandfathered" under the Capacity Assurance Program (for sanitary sewer service).

This recommendation of approval is made subject to the following conditions:

1. The site shall be developed in accordance with the submitted site plan, provided that the cul-de-sac shown for Cielo Vista Road is replaced by a street aimed so that an intersection may be provided either to Estrella Drive or to the collector street to the west of the subject site.
2. All necessary permits shall be obtained from the Divisions of Planning, Engineering and Building Inspection prior to construction and occupancy of the building.
3. A storm water plan for the site shall be accepted by the Division of Engineering prior to any construction.
4. The collector street to the west of the subject site shall be constructed, and dedicated as a public street, prior to the issuance of an Occupancy Permit.
5. Otherwise, Screening of the parking lot, as required by Article 18 of the Zoning Ordinance, is to be installed prior to the issuance of an Occupancy Permit.
6. Any back-up power generator on this site shall be located at least 100' from any single family home on adjacent property, and shall be landscaped and screened from adjacent residences.

Representation – Mr. Rory Kahly, with EA Partners, was present on behalf of the appellants. He indicated that they had reviewed the recommended conditions and agreed to abide by #2 through 6, but had an issue with recommendation #1. Mr. Kahly said that he also had with him the property owner (Jim Baker), Tim Edwards from Ramsey Development, and Robert Bush from Magnolias Springs Assisted Living Facilities.

Staff Report – Mr. Emmons stated that there were two staff reports: the original staff report, which had recommended postponement, and a supplemental staff report, which was an update the original staff report. He said that the two worked in conjunction with each other to provide a full recommendation.

At this time, Mr. Emmons presented photos on the overhead projector and briefly touched on the following points:

- The acreage of the property (approximately 30 acres of undeveloped land, seven acres of which is for the assisted living facility.)
- Three stub streets :
 - Lucille Drive coming in from the west and east (a collector street)
 - Estrella Drive coming in from the north of the subject area
 - Cielo Vista stubs directly into the property
- Applicant's site plan, describing the use and the size of the proposed building
- Parking spaces (approximately 98)
- Access completely off Magnolia Springs Drive, a collector street that will connect to Citation Boulevard
- Design they are proposing to build, noting the similarity to other existing assisted living facilities
- Distance between proposed use and residential uses within the neighborhood
- Concerns of design of site layout expressed by the Fire Department during the Technical Review meeting.

Mr. Emmons said that the staff sees that, upon completion of the appropriate public infrastructure, that the site would be a good place for an assisted living facility; however, paramount to the discussion is the completion and the design of the public infrastructure.

He said one of the primary focuses on this discussion is condition #1: the staff is recommending that

Cielo Vista either be continued through to the collector street (as currently approved) instead of a hammer head cul-de-sac (as being proposed); or that it be turned to connect to Estrella Drive (a local street).

Using a PowerPoint presentation, Mr. Emmons further explained some of the staff's concerns about the public infrastructure. He said that what was being shown was a very big picture of the entire Masterson Station area, with the subject property highlighted in yellow (showing the full 29 acres and not just the 7 acres for the assisted living facility.) He then indicated the arterial roads (Leestown Road, Georgetown Road, and Citation Blvd.), noting that Citation Blvd. is planned and currently under construction.

He went on to say that there is also a collector street system that is partially built in the area. Mr. Emmons said that once the collector system is complete, there will be good connectivity between the arterial roads, the collector system, and the local streets. He then said that the staff's concern is the path to get to the proposed location without completion of the full street system, and described it as kind of a "winding path" to get to the site. Mr. Emmons said that the applicant has agreed to build the collector system that would connect Lucille Drive to Magnolia Springs Drive; however, they have not agreed to completing Lucille Drive all the way across. Mr. Emmons then presented several more exhibits of the incomplete collector roads and arterial roads that are in the area.

Mr. Emmons said that the staff met with the applicant. The applicant submitted an additional letter as a result of that meeting, outlining that they agreed to build Lucille Drive from the west to Magnolia Springs Drive, and then Magnolia Springs Drive down to the subject property. He said that although it was good to get a commitment to build the collector streets, because that would mean it would be serviced by a collector street, one of the major changes that the staff has asked is for the continuation of Cielo Vista getting rid of the hammer head cul-de-sac, and continuing that street. It could be done either straight to that property through the collector street as it is currently approved; or, as an alternative, to swing that road up, and connect with the local street (Cielo Vista) into Estrella Drive. Mr. Emmons then said that to Mr. Sallee would finish the staff presentation.

Mr. Sallee used the overhead for his presentation and said that, as the Board knows, when a conditional use permit is considered, there is a finding that is mandatory for the permit to be approved; that finding is that the public facilities and services are available and adequate to support the proposed use. He then said, as Mr. Emmons had highlighted, there is only one street currently serving the property that is being asked to be approved for an assisted living facility at this hearing. He also said that the good news is that the arterial roadway (Citation Blvd.) is anticipated to be constructed and completed about the time that this proposed facility might be open and ready for occupancy. In addition, the applicant has agreed to construct a portion of the collector street to help ensure that. Mr. Sallee then said that the debate is over the local street portion of this application.

Mr. Sallee said that, as it states on the agenda, the staff finds that with this information, public facilities are available and adequate if they are constructed in the timely fashion that the staff currently anticipates if there is a connective street system in this area. He then said the truncation of Cielo Vista is, in a way, contrary to this finding; so that is why the staff, in condition #1, has requested that the cul-de-sac not be a part of this approval.

Mr. Sallee noted that the exhibits that were handed out to the Board before the start of the meeting help explain the staff's purpose in recommending this condition. He said several years ago, the subject property, which was shown in a red circle on the exhibit, although it does extend as far south as to the right-of-way of what is planned to be Citation Blvd., has had plans approved for about a decade. The streets are built as shown in the exhibit, but the currently approved plans by the Planning Commission would have this type of connection to the future collector; to the arterial, and would have three local streets intersecting that planned collector street. Mr. Sallee said that these streets could not be constructed today because too much time has elapsed from the time the Planning Commission approved this version of the street layout to today's date.

Mr. Sallee then said that the applicant is asking; with their request, that the approved street pattern be altered in this fashion: to where Cielo Vista would have a hammer head cul-de-sac, would not extend to the collector street, and that the assisted living facility would have access through the collector street, or through the hammerhead.

He said that the staff recommendation would be that Cielo Vista extend; at a minimum; to Estrella Drive, which is the next local street immediately to the north; and in the staff's opinion, it would still

allow the development to proceed as shown on the site plan. The collector street could still be possible, there would be a collective system of local streets around this use; and, from the staff's perspective, there would be no issue with whether or not there would be available or adequate public facilities for the requested conditional use.

Mr. Sallee then said that the only hesitation that staff could anticipate from the applicant, as to why this is not an acceptable alternative, would perhaps be that they have a need for a certain amount of acreage to be associated with this conditional use. He said that this particular street pattern, the staff believes can be accomplished without a great loss to the open space and the lot that they have proposed; but, assuming for a moment that; for whatever reason, they must have a site that is near the acreage that they are proposing. He said that the staff would offer one alternative for consideration. The collector street has not been built; and, as such, its location can be shifted in a fashion that would still allow the subject lot to be very close to the size that they are showing on the submitted site plan. Thus, even if that were the reason why this street extension is not proposed, the staff believes that there is a workable alternative to that, that will still allow them to do exactly the same size facility with nearly the same number of parking spaces; there will be an interconnected, local street system, and the development could proceed as it has been planned.

Mr. Sallee said that the staff had printed copies of the staff alternative that were handed out to the Board. He then said that that was the basis for the staff's recommendations; both in the findings for approval, stating that with the planned construction, and with the one change, that there would be all available and adequate public facilities to serve this use; and secondly, that the local street system would be connected and interactive to allow this use to proceed.

He said that the reason this is so important to the staff is identified in the area that is labeled B-1 (shown on the upper right hand portion of the drawing on the overhead); that is the zoning designation for that property; it has frontage on Greendale Road, and it is a short distance north of the planned arterial of Citation. He said that the street, Cielo Vista; is the main intersection of the street accessing Greendale and that commercial development; and there is planned and approved access to business lots off of the street that is being asked to be approved as a cul-de-sac. Mr. Sallee said that staff thought that there will be demand from pedestrians and vehicles to use the street to access that commercial area, should it be built in the future. He said that is why staff felt it was important to present and explain this information about the staff's recommendation, and to ask the Board to seriously consider the first condition recommended by staff.

Mr. Sallee noted that out that this plan for the street system is also progressing through the Planning Commission; the applicants have postponed those plans for a month; as they did this conditional use request; but this is the first hearing on this matter.

Representation – Mr. Kahly said that he had provided the Board with the site plan as well as a layout of the overall area. The site plan shows Magnolia Development's plan for the facility. He said that he had also provided information about the facility itself. Regarding the staff's presentation and condition #1, he said that the main issue is with the access points. He explained how they planned to address that and how the property would be connected to Citation Boulevard through the neighborhood. He said they would construct a collector street to connect to two other collector streets, which would then connect to Citation (an arterial street). He also explained the local street system, noting that the street known as Cielo Vista was proposed to terminate on the property as a hammerhead cul-de-sac.

Mr. Kahly said that there are several parts of the surrounding area that have not yet been developed and pointed them out to the Board from the overall area exhibit. He explained how the street system is intended to work throughout the neighborhoods, nothing that there is a high level of connectivity in the street system. He said that terminating the one street, as they are proposing, will not hinder overall flow of traffic in the area; and it will benefit the Magnolia Springs development, as it will give them more available space on their property for the residents' use, many of whom are very active.

Mr. Kahly said that the hammerhead cul-de-sac design is allowed by Lexington's Subdivision Regulations, and they meet the allowable length for a cul-de-sac with their design. He added that a cul-de-sac is not a bad design element for a street - they are widely used; and many people prefer to live on a cul-de-sac, as opposed to a through street.

He said that the continuation of Cielo Vista through the site, as the staff was recommending, would cause the building to shift closer to Citation Boulevard. The way the site is currently laid out, the building is approximately 120 feet from the right-of-way. He said that they had met with the Fire

Department, and they had expressed a preference for access (a fire lane) to come around that side and to the back corner of the property to provide a turnaround area for emergency vehicles and so that the building can be accessed from all sides. Providing that fire lane, along with the road extension through the property, greatly reduces the amount of useable open space on the property. Mr. Kahly said that the area in question is the location of the memory care (Alzheimer's) wing of the facility, which they prefer to be more isolated and quiet. Locating the building closer to Citation Boulevard would greatly detract from that.

Mr. Kahly said that, as the area is designed, the property can be accessed by four streets, from different directions. The extension of Magnolia Springs Drive, as they have proposed, will greatly improve the already existing street connectivity. It was his opinion that the staff's recommendation of the extension of Cielo Vista through the property would make it a more confusing, more roundabout street system. Mr. Kahly said that, if approved by the Board for the conditional use and by the Planning Commission of the development plan, Magnolia Springs Drive can be constructed at the same time as the property is being developed and the infrastructure (whatever is not yet there) is being installed.

Mr. Kahly asked the Board if there were any questions about his presentation.

Board Questions – Mr. Griggs asked about the four streets that Mr. Kahly had mentioned, and if Cielo Vista only provided pedestrian access to the property -or if it was included in the four streets providing vehicular access. Mr. Kahly responded that it is a public street and does provide access to the site, as it currently stubs into the property. He said their proposal is to terminate it correctly as a cul-de-sac, and then there would be a pedestrian connection into the site. He explained that to have a legal lot, there must be legal frontage; and Cielo Vista currently provides the legal frontage for the property. Mr. Griggs commented that it didn't appear to be useful access except possibly for emergency purposes, but there would be no real space to park a vehicle. Mr. Kahly said that, once this is built out, they intend to provide emergency access through there - they just don't want to tie the parking lot into it. However, Cielo Vista does provide legal frontage for the property. He said that if the property were going to be developed as Single Family Residential, Cielo Vista would be extended as the staff was recommending.

Mr. Griggs asked about what Mr. Kahly's reference to a "convoluted" way to get to the property if Cielo Vista was extended. Mr. Kahly clarified that he was referring to construction access. Mr. Griggs said that possibly he (Mr. Griggs) just didn't understand the importance of getting to the site if someone was unable to park their vehicle on site - he didn't understand the legalities of it. Mr. Kahly said that the time frames were separate - i.e., one was when construction would begin and the other when the work was completed. He explained that when construction is completed, Magnolia Springs will be completed as a collector street to Citation Boulevard and then out to Lucille Drive. That will provide the main access from Leestown Road to this property.

Mr. Griggs then asked Mr. Sallee if the concern with this site is short term (where the roads aren't built), or if it is in the long term (with the potential backup of traffic that could be alleviated by connecting Cielo Vista to Estrella, as the staff recommended). Mr. Sallee responded that he thought it to be more long term. He said; in the short term, it is likely that the streets will be constructed along the same timeline as the assisted living facility, which is reassuring at the level of arterial streets and collector streets. The closing of the local street has more of a long-term implication because it impedes how the residents in the area (both existing and future) will want to try to get to the neighborhood business area. The only other neighborhood business area in the vicinity is further south at Citation and Leestown Roads. He said that the staff believes there will be great demand on the part of the residents to get those stores, so closing that off as a local street connection is of concern to the staff, which is long term.

Mr. Griggs noted that the street right below it is a loopy "cul-de-sac"- just north of Citation Blvd. Mr. Kahly explained what he saw to be Mr. Sallee's concern about long-term aspects of what they are proposing. He said that, once totally built out, if they were concerned about people getting to the B-1 property referred to by Mr. Sallee, there would still be several ways for the residents to get to that commercial area. He added that he didn't believe what the staff was recommending; with regard to the Cielo Vista connection, would be any more beneficial than if it ended at the subject property as they were proposing.

Ms. Moore observed that there were about 20-25 houses on Cielo Vista, which Mr. Kahly confirmed. She asked if there would ever likely be more than that. Mr. Kahly said, with the design they were proposing, that there would not. He said that all of the lots were recorded and the majority of the

houses constructed, and currently Cielo Vista dead-ends at the property line. They hope to provide the hammerhead cul-de-sac when the property develops.

In response to a question from Ms. Moore, Mr. Kahly said that the forty or so houses in the immediate vicinity could, once everything is built out, take multiple routes to get to the commercial area. Ms. Moore said that she understands the benefits of connectivity and why the staff is recommending it over construction of the cul-de-sac. Mr. Kahly responded that there is a wide array of opinions as to whether cul-de-sacs are good or not.

Mr. Griggs expressed his personal dislike of hammerhead cul-de-sacs. He said that, in the majority of cases, there are houses built around them, which makes it a nightmare because of driveways. He said that if there are no houses around this hammerhead, it would probably work pretty effectively. Mr. Kahly noted that, with a regular cul-de-sac, more space is needed than with a hammerhead; and their proposed design would provide more outdoor space on the property for the assisted living facility.

Mr. Glover asked, with regard to process, what the Board should take into consideration and what the basis of their decision should be. In response, Mr. Saltee put the staff report on the overhead, noting that it should not be based on personal like or dislike of cul-de-sacs. He said that the Ordinance prescribes in Article 7-6(a)(3) the continuation of existing or collector streets; and, whenever possible, the continuation of local streets should be provided by the Board in approving a conditional use. He said that this is directly out of the Zoning Ordinance; although ultimately, the Planning Commission will determine the street configuration for the area because an amended street layout is proposed for the entire 29-acre development - not just the subject property. He added that Article 7-6(a)(3) is what should guide the Board in this instance. Mr. Kahly replied that they were applying for the conditional use - to determine if the assisted living facility is compatible with the neighborhood; and, if the cul-de-sac were removed, it would still be discussed at Planning Commission level.

Ms. Moore asked, even if the Board approved it as recommended by the staff, if the Planning Commission could still require the street extension. In response, Mr. Kahly said that if the Board approved the project, with only five of the six conditions (#2-6), the Planning Commission would still have to approve allowing the hammerhead cul-de-sac design. Ms. Moore asked if the Planning Commission could require them to connect the street, to which Mr. Kahly responded that they could, although that may "kill the deal". He explained that Board of Adjustment action was needed first because the development plan couldn't be acted upon with a use that had not yet been approved.

Mr. Glover asked the staff how the Planning Commission would treat the Board's approval or disapproval. Mr. Saltee responded that, in many cases where the Planning Commission and the Board are reviewing related applications for the same property, the staff always reports to either body any action the other has taken. He said that he anticipated nothing different in this case, adding that the applicant had elected to come to the Board of Adjustment first, before going to the Planning Commission. Mr. Saltee said that the Planning Commission could decide if and how the streets should connect in this subdivision.

Mr. Griggs asked Mr. Kahly, since that was the Planning Commission's area of expertise, why not accept approval of the conditional use with all of the conditions. Then they could "fight their battle" with an audience with more experience in this kind of thing. Mr. Kahly said that the Board would still be making that a condition, and the Planning Commission could not overturn the Board's condition. If the Board required street connection as a condition of approval, it was his opinion that he would not be able to take the development plan before the Planning Commission without the street connection.

Mr. Griggs asked if there was a way to give the Planning Commission some "wiggle room". Mr. Saltee responded that if the Board added to the end of condition #1, "or as amended by the Planning Commission," or "by action of the Planning Commission," that might allow them to consider the cul-de-sac proposal and still allow the conditional use to be approved at this meeting.

Mr. Griggs asked if he would be agreeable to that modification of condition #1. In response, Mr. Saltee said that the only issue with that is that it would not seem to further Article 7-6(a)(3); and that was the staff's only hesitation. He said that condition #1 could be modified as the Board wished. Ms. Moore noted that, as she saw 7-6(a)(3), the Board should include that condition because of the wording "whenever possible." Here it would be possible to provide for the connection of local streets. Mr. Saltee said that that was the basis of the staff's recommendation.

Mr. Kahly said that the addition of the wording suggested by Mr. Saltee occurs quite frequently -

especially with conditional use when they require approval from both bodies. He said that they were extending a collector street to a collector street; and then to an arterial earlier in the process; before the rest of the houses are built; adding that he would hate to think that the Ordinance was written to rule out the possibility of cul-de-sacs in the neighborhoods.

In response to a question from Mr. Glover, regarding condition #1, Mr. Sallee said that he was not sure that the condition would be binding for the Planning Commission; but if the Planning Commission approved the Cielo Vista cul-de-sac, the applicant may need to return to the Board for possible modification of that condition. Mr. Griggs said that if the Planning Commission agreed to the cul-de-sac and sent it back, as Mr. Sallee suggested, he would not have a problem with it, adding that he was uneasy making a decision that would affect traffic. Mr. Kahly noted his understanding and said that was the reason he wanted the conditional use permit to be based on the use, letting the Planning Commission deal with the subdivision layout. He thought it should be approved with the original conditions #2 through 6, amending #1 to read "The site shall be developed in accordance with the submitted site plan, or as amended by the Planning Commission." That way, it would be the Planning Commission who would determine the street alignment.

Ms. Moore stated that, given the language in 7-6(a)(3), it should be approved with the condition as recommended by the staff; with the only question being whether the wording "or as amended by the Planning Commission" should be added; and if that wording is added, then the applicant would not need to come back before the Board. Mr. Glover expressed his agreement.

Based on the revised language of condition #1, as shown on the overhead, Mr. Kahly asked if his site plan would then have to be amended. Mr. Sallee responded that, before a Zoning Compliance Permit could be issued, the applicant would have to demonstrate that that condition had been met. Mr. Kahly clarified that it would be the Final Development Plan (scheduled for the May 8 Planning Commission meeting), and not the Board of Adjustment site plan. Mr. Sallee said that he would defer to Traffic Engineering in this regard, but it was his belief that it would be in the Planning Commission's purview. Mr. Kahly verified with Mr. Sallee, Traffic Engineering, and the Department of Law, that this would be the case - that the Board of Adjustment site plan would be replaced with the Final Development Plan and that it would not be certified until it met all of the conditions for approval imposed by the Planning Commission.

Ms. Moore said if there no other comments or questions, she would entertain a motion.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer, and carried 4-1 (Stumbo absent) to approve **C-2014-15: TIM HUBER/RAMSEY DEVELOPMENT** – an appeal for a conditional use permit to establish an assisted living center for seniors in a Planned Neighborhood Residential (R-3) zone, at 2930 Spurr Road (a portion of), for the reason provided by staff, and subject to the six conditions, including the amendment of condition #1, to read: "The site shall be developed in accordance with the submitted site plan, or as amended by the Planning Commission."

Note: Vice-Chair Moore declared a brief recess at 4:44 p.m. The meeting reconvened at 4:48 p.m. with the same members in attendance.

3. **C-2014-21: SOLAR ECLIPSE, LLC** – appeals for a conditional use permit to construct a parking area accessory to an adjacent P-1 zone in a Planned Neighborhood Residential (R-3) zone, at 2101 Palomar Trace Drive (Council District 10).

The Staff Recommends: Postponement, for the following reason:

- a. Additional information concerning the preliminary grading plans and potential extent of retaining walls is necessary to assess the impact that this proposed conditional use will have on adjoining properties.

Staff Presentation – Mr. Emmons began his presentation, noting that this was a conditional use request for a parking lot accessory to a professional office building. The property is zoned R-3 (Planned Neighborhood Residential) and is located at 2101 Palomar Trace Drive. He said that the site plan depicted both the proposed parking lot and the adjoining property where the office building will be located. The applicant's proposal will divide the subject property into three distinct areas - Lot 1 will be developed as residential and is not part of the conditional use, although it is still part of the property. Lot 2 will be the parking lot, and Lot 3 (along Harrodsburg Road) is a detention basin that will be expanded to accommodate the new use of the property. A PowerPoint presentation was shown to the Board that contained an aerial photo of the property, among other exhibits. He explained that the property

currently contains a house and has access to both Harrodsburg Road & Palomar Trace Drive. As part of his presentation, Mr. Emmons had superimposed the site plan on the subject property and the adjoining property in order to show how the proposal will work relative to the surrounding area. He said, in reviewing the site plan, there was nothing notable about the property until the contours were studied. In this case, between the high point of the development (on the P-1 property) and the low point (where the detention basin is located), there is about a 26-foot elevation difference. He said that the staff recommended postponement, primarily because it was not known what kind of an effect or impact that much of an elevation change would have on the property. He said that it was possible (but not definitely known) that there would be a need for significant retaining walls because of the topography of the site. What was at question was what effect the grading and/or retaining walls might have on the development or on neighboring properties.

Mr. Emmons said that the applicant was proposing to replace the existing residence with a new one; and, as of then, there were only a few residential properties that adjoined the proposed parking lot. He said that of major concern was the northwest corner of the property where the parking lot would abut adjoining residential properties.

Mr. Emmons said that the applicant had responded earlier in the week to the staff's concerns and had provided information regarding their proposed (preliminary) grading plan, which shows how the property could be graded, based on the existing topography. He said he would leave the detailed explanation to the applicant/ and/or his engineer; but, in general, there would be more "cut" in the detention basin than what currently exists. It would be graded up to the parking lot; and most of the parking lot would likely be built on fill, or it would be re-graded so the parking lot will be more level, with slopes coming down so that the drainage can be controlled. In the residential lot, the grade would again slope up to the Palomar Trace Drive cul-de-sac. Mr. Emmons said that there had been little time to review the grading plan since it had been submitted. Therefore, he still questioned the amount of grading that would be required in so tight a space so that the grades would match up with those on the neighboring properties. How the grading and the required landscaping would all work together was still a concern.

Mr. Emmons said that, if the Board made a determination on the case that day, the staff would be more comfortable if the six spaces where the parking lot abuts the residential properties were removed, and the greenspace expanded between the parking lot and those properties. That would ensure that the required landscaping could be put in as required by Article 18. If, on the other hand, the Board postponed this, as recommended, the staff would have time review the options regarding grading and landscaping. He said it was possible that the site plan, as proposed by the applicant, would be acceptable at that point; or the staff may still have to recommend that the six parking spaces be removed. Mr. Emmons said that the staff still recommended postponement, even with the new information provided by the applicant (preliminary grading plan).

Representation – Mr. Richard Murphy, attorney, was present representing the applicant. He explained that Solar Eclipse, LLC, is a company owned by three people, two of whom were present: Dr. Butch Schroyer, DVM; Jimmy Ball, builder; and Jake Reardon. Mr. Reardon was not present at the hearing. Mr. Bill McAlpin, Eagle Engineering, and Chas Hite, planner in Mr. Murphy's office, were also present. Mr. Murphy said that he had placed a handout at each Board member's place.

Mr. Murphy said that when he received the staff's postponement recommendation and read about the concern regarding retaining walls, he asked Mr. McAlpin to do a preliminary grading plan, which is not normally done until a later stage in the process. This was to determine if retaining walls would be needed. Mr. Murphy presented a larger, rendered version of the grading plan presented by Mr. Emmons and explained its layout. He said that Mr. McAlpin determined that the grading could be done without the use of retaining walls and would be able to meet the required slope (5% or less). He said the maximum slope in any one location on the property is 4.5%.

Mr. Murphy presented an aerial photo of the neighborhood, which showed the intersection of Harrodsburg Road and Wellington Way, as well as the two properties being discussed. He said that one of the properties (the Dozier property) had just recently been rezoned, and what was before the Board for this conditional use was a remnant parcel from Palomar Trace Drive.

The back part of the property is zoned R-3 - the same as the properties on the other side of Palomar Trace Drive, which was built out in the 1990s. Palomar Trace Drive cul-de-sacs at the subject property. Mr. Murphy said that, during the zone change process for the Dozier property, they had met with the neighborhood association. One of the critical points brought out by the neighborhood was that they wanted no access to that property by way of Palomar Trace Drive. He said that was continuing over to

the conditional use application. This is why Palomar Trace ends as a cul-de-sac; and he emphasized that there will be no vehicular traffic from the P-1 zoned property, through (or from) the subject property, to Palomar Trace Drive. He said that access to the subject property is from Harrodsburg Road. There are two driveway aprons constructed by the State, when it was 4-laned about ten years ago; to serve the driveway on each of the two properties. When the development plan for the zone change was approved, the State strongly advised that applicant to have a joint access driveway with the Baker property – as it was preferable to having two driveways. Mr. Murphy said that that made sense; and they agreed to do that, after consulting with Mr. Baker. During discussions with the neighborhood it was suggested that the owners of the Dozier property purchase and replace the existing single family residence on the subject property with a house that faces Palomar Trace Drive, and is more in character with the rest of the houses on the street.

Another issue that arose was storm water detention. Mr. Murphy said that they had planned to do underground detention on the Dozier property, which would detain runoff for a period before it drained into the basin on the subject property. That basin holds water that then drains under Harrodsburg Road. Mr. Murphy said that, after all these discussions, his client (Solar Eclipse) saw the benefit of purchasing this property for the parking and the existing drainage basin, as enlarging this detention area was more practical than excavating for underground detention that would then empty into this detention basin.

Another benefit of purchasing the property and using much of it for parking was that the office building could be made somewhat larger than originally anticipated because more parking would be available. Mr. Murphy said it was basically a “convergence of forces” after the zone change that brought them to where they were with this conditional use permit. He reiterated that there would be no vehicular access from the property to either Palomar Trace Drive or Sallee Drive, another local neighborhood street to the east. He said that there are several cul-de-sacs in this neighborhood, which was done intentionally as part of its design.

Mr. Murphy said that a parking lot is permitted by Article 16-3 of the Zoning Ordinance as a conditional use, noting that that was explained in his exhibit packet. There are six criteria listed that must be met in order to have stand-alone parking in an R-3 zone. He went through each and said that they meet all six with this application.

Mr. Murphy also mentioned the Comprehensive Plan and the Indian Hills Small Area Plan, which is an adopted element of the Comprehensive Plan. He said that it was stated in the Small Area Plan that this portion of Harrodsburg Road should remain a professional office and residential corridor. This application complies with that recommendation. He said that in the last few Comprehensive Plans, the emphasis has been on redevelopment and infill because the Urban Service Area (USA) boundary is not being expanded, which means that vacant spaces within the USA must be utilized. This application also complies with the Infill and Redevelopment policy endorsed by the Urban County Government. He cited sections of the Comprehensive Plan, noting that they were included in his findings for approval of their conditional use request.

Mr. Murphy said that when they were going through the zone change process for the Dozier property, they were in close contact with the residents on Palomar Trace Drive. He said they were very interested in the fact that an office building and additional residences were part of the proposal.

He said that they worked very closely with them and understood that concerns had been expressed with this proposal by residents who live farther back in the neighborhood, some of whom were present.

Mr. Murphy referred to the exhibit on the overhead and explained that there is a concrete flume near the property line shared with residences on Sallee Drive that empties into the existing detention basin. He said they understand the staff's concern that Mr. Emmons had mentioned in his presentation regarding removal of the six parking spaces. He thought that they could come up with a solution that would allow them to keep those six spaces; but he said they were also willing to remove them, if necessary, to create more of a buffer.

Mr. Murphy said that, in addition to their zone change for the Dozier property, the nearby child care had also recently been rezoned to B-1 for redevelopment, and the immediate area was undergoing some changes. He said he would like to address some of the concerns raised by neighbors regarding their conditional use request. One concern was traffic, and he re-emphasized that there would be no vehicular access from their property to the residential streets of the adjoining neighborhood. All traffic will be routed to and from the entrance on Harrodsburg Road, which is at Wellington Way. He said that they had provided a traffic impact study at the time of the zone change, which was accepted by the

Planning Commission, and the zone change was granted. There was concern expressed about the type of lighting that would be used for their proposal, and he said that all lighting is required to be directed downward and shielded from adjoining properties (e.g., shoebox lighting), which they would do. There was also concern about possible drug trafficking or teenage drinking in the parking lot. He said that Jimmy Ball has built a number of professional office buildings in Beaumont and several building in Hamburg. He said a lot has to do with how buildings like this are managed; and Mr. Ball's buildings have always been well managed, not allowing that type of thing to occur. He said that their plans for the parking lot were reviewed by the Police Department as part of the plan review for their zone change, and they had no issues regarding design of the lot or possible activities that could occur. Mr. Murphy said that potential devaluation of property was also mentioned as a concern. He said that the existing house on the property was most recently assessed at \$180,000. That house will be replaced with one with a market value around \$400,000 or more, which is similar to those proposed on the south side of Palomar Trace Drive, and higher than the already existing residences. So, rather than lowering property values in the neighborhood, values will actually go up, as Mr. Ball builds "high end" housing. Mr. Murphy said that, even though he had addressed these concerns, he realized that there would likely be more expressed by members of the audience. It was his belief that they have a good plan and a good layout for the property, as well as the adjoining property; it works logically; there is no reason to excavate for underground detention, when all the water eventually will flow to this one anyway; the new house will be an improvement to what is existing; and the parking will be oriented to the office building and will have only access to Harrodsburg Road, which makes a safer traffic situation for the area.

Mr. Murphy reiterated that it is a good plan and strong plan. He said that he had provided findings for approval and asked the Board for their approval. He said that Mr. Bill McAlpin, engineer, could answer any questions the Board might have regarding grading or storm water; and Dr. Schroyer or Mr. Ball could answer any questions about the proposed development.

Opposition – Mr. Bruce Simpson and Mr. Nick Nicholson, attorneys, were present. They distributed exhibit packets to the Board members. Mr. Simpson said he was present on behalf of the Harrodsview Neighborhood Association, as well as several individuals. He said that this neighborhood association is directly adjacent to the proposed parking lot/and expanded detention basin.

In response to a point made by Mr. Murphy, Mr. Simpson said that, unlike the meetings with the Palomar Trace Neighborhood Association; there had been no meetings or other contact with the Harrodsview Neighborhood Association. He said they had been retained only a few days prior to the hearing and had spoken to Mr. Murphy about the possibility of postponement. Mr. Murphy had said that his clients wanted to go forward and be heard.

Mr. Simpson said that this was a major change in land use, and the most impacted neighborhood would not be Palomar Trace - it would be Harrodsview, as they are closest to the site. He said that he has a long history associated with this neighborhood, as it was where he first became involved with land use issues in 1988. He said he had also lived in the neighborhood for several years; and, at that time, the Palomar Trace neighborhood did not exist. He said, being on the "edge of development" like that, the neighborhood has always been very active, interested and involved in what was going on in the area around them. He said that the Harrodsview neighborhood had worked out an agreement with Mr. Baker (owner of the subject property at that time, as well as a large amount of the other property in the area) that the area would be developed as single family residences, which was done as deed restrictions. He said that it was recorded in the County Clerk's Office, and is part of how Palomar Trace came into being, was done at the initiative of the Harrodsview Neighborhood Association.

Mr. Simpson said that Mr. Murphy had presented Article 16-3 of the Zoning Ordinance regarding parking as a conditional use in an R-3 zone; however, in his opinion, the deed restrictions that he had referred to preclude Article 16 for anything other than single family residential use. He said that the existing residence has been on the property since 1960; and Mr. Murphy was trying, by way of Board of Adjustment approval, to get something other than residential use approved for the property. The house on the property has been part of a single family residential neighborhood since 1960. Palomar Trace was developed in 1993, and Harrodsview was developed in 1988.

Referring to his exhibit packet, Mr. Simpson noted that Article 7-6 lays out the specific powers of the Board. He said that the threshold determination was, when the Board approved a conditional use, if it allowed "the proper integration into the planning area of uses which are specifically named in the Zoning Ordinance, which may be suitable only in specific locations in the zone; only if certain conditions are met; and which would not have an adverse influence on existing or future development of the subject property or its surrounding neighborhood." Mr. Simpson said that the evidence that he would present

would prove to the Board that what was being proposed would adversely affect the subject property (and other properties immediately adjoining the property).

Mr. Simpson said that the property is zoned R-3, and Palomar Trace is zoned R-3. In the Zoning Ordinance it clearly states that the R-3 zone is a Planned Neighborhood Residential zone - not a Planned Office or parking zone or any other kind of business. He said that the applicant is asking for a conditional use, which is allowed by law, but subject to the section of the Ordinance that he had quoted. He said that he knew of no one who would look upon demolition of a residence and yard to build an 82-space parking lot and large detention basin as an appropriate, neighborhood-friendly use. Mr. Simpson said he did not believe that the applicant could satisfy the requirements of Article 7-6 for a conditional use.

Mr. Simpson said that Dr. Schroyer had a property re-zoned to allow an office building, which would require demolition of a residence. Then he purchased this property and intends to demolish the residence on this property as well. Although there will be a new residence built, he intends to put a parking lot and a large detention basin on the property. Mr. Simpson said that, in order to clarify the actual "history" of this proposal, he would like to show the Board two exhibits. He said that when Dr. Schroyer went before the Planning Commission in December to re-zone the Dozier property, it was an application for a professional office use in a P-1 zone. It was approved by the Council on January 30 of this year.

He said when the zone change was approved, there was sufficient parking for the building, which was a 26,800 square-foot building. Mr. Simpson said that the subject property could have been re-zoned at the same time, but wasn't. He added that every Comprehensive Plan thus far has recommended residential use for this property. Mr. Simpson referenced the 2013 Comprehensive Plan, noting that while individual parcels no longer have a specific land use recommendation, the Plan does say that a proposed land use should be compatible with surrounding properties. He said that we do need infill, but not without consideration of its impact on surrounding properties. He said the subject property has been occupied as a single family residence since 1960. He continued, noting that the parking for the proposed office building was available when the zone change was approved for the building, part of which would be located above the underground detention vault. Then, approximately two months later, even though the property has only been used as a single family residence, and the Comprehensive Plan has always had a recommendation for residential use, because it is zoned R-3, they took the opportunity to apply for a conditional use for parking because the Ordinance provides for that. Mr. Simpson said it was up to the Board to determine if the timing of their "epiphany" was before or after the zone change; but the net result of the conditional use request is that the office building proposed for the Dozier property has increased in size to a little less than 39,000 square feet (an increase of 11,700 square feet). He said that he didn't believe they could have gotten that with a zone change, and they are asking for a conditional use permit now to develop a large portion of the Baker property as a parking lot and an expanded detention basin so that the underground detention vault doesn't need to be constructed.

Mr. Simpson repeated that they had a sufficient amount of parking for the size building that was originally planned when the property was re-zoned. Now they are coming to the Board asking for more parking so that the building can be expanded. He presented photographs on the overhead that depicted the subject property, the Dozier property, and the surrounding neighborhood(s). The photos were also included in his exhibit packet (Tab 4). He provided a description of each photo, emphasizing that the residents of the proposed house would have a view of the parking lot when looking out the rear door or windows, or when in the rear yard, and noted the apparent incongruity of the situation. Mr. Simpson mentioned the existing trees on the property, and said that the Planning Commission, if this were a zone change, would question the impact the proposed development would have on these trees. He said that, as yet, no mention had been made of those trees; and, based on the site plan; many would have to be removed.

Mr. Simpson again noted the length of time it had been there and said he could see no compelling reason for it to be demolished, and a photo of the existing residence was also shown. He said he had a copy of the PVA listing of the property (Tab 5), and that Mr. Baker had owned it (and rented it to tenants) for several years. The house is in good shape and has a nice rear yard. He said he was unable to understand the reason for what the applicant was proposing to do with the property, based on its condition and its history as a single family residence.

Tab 6 of the exhibit packet contained the agreement with Mr. Baker that was referenced earlier by Mr. Simpson, which was executed in 1993, reducing the number of single family homes that had originally been agreed upon. Mr. Simpson said that the principal provision of that agreement was that the property

have a single family orientation and single family uses, noting that Mr. Baker still owned the property. Mr. Simpson said that it was a recorded document (deed restrictions) and that he had prepared those deed restrictions, which allowed only single family residential development. He said they would now have to take the matter to court to enforce those restrictions. It was Mr. Simpson's opinion that putting a parking lot and detention basin next to residential properties that had been there for nearly 30 years was not good planning; not consistent with how a conditional use should be considered and should, therefore, be denied.

He said that he had prepared findings of fact to support denial of the conditional use, based generally on the radical change in use from a 21-year history as the rear yard of a residence abutting homes on Sallee Drive, putting a large parking lot right next to those properties; and having this property take all the storm water runoff from both this and the adjoining property.

Mr. Simpson said that the proposed use is just not compatible with the adjoining residential properties; and the Harrodsview homeowners, as opposed to the Palomar Trace residents, would be severely impacted by it. He added that the applicant(s) had not reached out to the Harrodsview neighborhood, as he would have expected.

Mr. Simpson said that, in his opinion, under the guiding principles of the law that the Board must consider when considering a conditional use, based on the impact this will have on the adjoining neighbors, this should be denied. He said that there were neighbors who would also like to speak.

Citizens in Opposition – Mr. Louis Hairston, 2124 Sallee Drive, said that this was a quality of life issue for him. He said that, in the previous twelve years, he and his family had moved seven times, and had carefully chosen this property to occupy several years - at least till their children were grown. His property has a pool, and he said they had carefully researched the area to ensure that the property would be able to hold the pool and that surrounding properties would not interfere with that. Their property is a family and neighborhood gathering place and is a nurturing environment for the kids in the neighborhood. He said that they currently feel insecure in their home and on their property, and the proposed parking lot leaves them feeling secure, as the lot could become a congregation point. Mr. Hairston said that there have already been issues with kids getting mugged in the nearby McDonald's lot. In addition to the loss of privacy, he said that looking at a parking lot would be less than desirable. He asked that the Board deny the application.

Ms. Tanya Bell, 2121 Sallee Drive, was present. She said that, being at the end of the cul-de-sac, all of the stormwater from both Sallee Drive and McNair Way drains downward towards her property. Maybe 4 or 6 times per year, in the spring and the fall, her property becomes like a lake; and it takes about an hour for it to drain. She asked if all of the greenspace is removed from the property to build a parking lot, where the water would go, noting her concern that it would flow into her property because there would be no open greenspace to absorb it. She said the same thing happened to the properties near where Kerr Brothers funeral home was built. Once the greenspace was removed and the property was developed, surrounding properties began to experience flooding, and this was her main concern.

Ms. Malia Hord, 3533 McNair Way, said that she is a business owner in Lexington and has lived in the Harrodsview area since 1998. She said that what had not yet been discussed was the safety of the neighborhood children. There are 49 children under the age of 20 in the area of Sallee Drive and McNair Way. Because the majority of the neighborhood streets are cul-de-sacs, most of the children ride their bikes, walk their dogs, and play in the streets. They are often in her rear yard or the yards of Mr. Hairston or Ms. Bell, because they are the only properties with a fair amount of greenspace. She said that the neighborhood kids use the subject property as a play area as well, because the closest park is Harrods Hill Park, further to the north. Ms. Hord said that one of the reasons they moved into the neighborhood was its feeling of safety, which was partly the result of the buffer the subject property provided between the residences and the Palomar Shopping Centre. She said they would like to keep the "bubble" that surrounds them. The parking lot has the potential to introduce crime into the neighborhood, which had happened with the Palomar Centre.

She said she was concerned that having the office building, which was now being expanded, and the parking lot in such close proximity to the neighborhood, would bring undesirable people and activity to an area that, to this point, has been relatively quiet and secure.

Ms. Hord said she was also concerned with the additional traffic that would be generated at the Palomar/Wellington Way intersection, as there are already several uses (e.g., banks, AAA office, and miscellaneous uses in the shopping center itself) near that intersection. There is no traffic light other

than the one at Harrodsburg, and she believed that there would be much more traffic congestion at that location if this were approved. She expressed her surprise that no one questioned this and how it would impact the safety of the neighborhood children.

Ms. Linda Richardson, a resident of Sallee Drive, said that she understood that the ingress/egress to the development would be from Harrodsburg Road - that the State had approved a driveway from Harrodsburg Road. She said that she had done some research and found an ordinance for Harrodsburg Road (Ordinance #92-87 - Transportation Policy) that addresses access spacing and driveways along Harrodsburg Road. She said that the Ordinance states that there can be no driveway access for Harrodsburg Road for new development. If it exists, then when the development is completed, the driveway access shall be closed. She asked if the State's approval supersedes this Ordinance; if so, that places the driveway going into the property at the beginning of the turning lane for Wellington, which is a very busy part of Harrodsburg Road, and traffic moves through there very rapidly. She said that construction vehicles will be entering and exiting from that driveway. She said that she was very concerned about traffic safety and believed that the proposal was a bad idea for the entire neighborhood.

Ms. Debbie Snyder, 2153 Sallee Drive, said that she has lived on that street since 1992. She said one of the reasons they bought their house was because of the amount of green space in the neighborhood. Over the years, that green space has disappeared because of the shopping center, as well as the development of the residential neighborhoods. The only amount of green space that is left is the subject property. She said it was important to keep that green space because of the neighborhood children. She would hate to see it disappear, because it provides a place for the children to play.

Ms. Robyn Wilkinson, 2156 Sallee Drive, relayed her concerns about noise, in addition to the safety issue previously mentioned. He said that this property provides somewhat of a noise buffer between Harrodsburg Road and the neighborhood. He believed once the trees are gone, there will be nothing to buffer the noise.

Ms. Meredith Hall, daughter of the owners/residents of 2128 Sallee Drive, was present. She said she was one of the kids who grew up in the neighborhood. She said her family moved there because it was quiet and peaceful, and it was a wonderful place to live. She said that she was the babysitter for all the neighborhood kids. Ms. Hall said that safety is the number one issue - for the children, as well as her parents, adding that they would like to have this space remain the way it is.

Other Citizen Comments - Mr. Michael Walsh, 2153 Palomar Trace Drive, said that he has lived at this address since 2001, and has been very involved in all of the development activity that has taken place in the area. He added that he could address concerns of the neighbors, as well as points made by both Mr. Murphy & Mr. Simpson. He said that Palomar Trace Drive had been developed about 20 years ago. There are 24 houses on the street, nine of which are still occupied by the original owners. Nine more are occupied by the second owners, who have lived there for approximately 14 years, which makes the average length of residency about 15 years. Mr. Walsh said that this conditional use is the 4th development event that has occurred in that area since 2001. He said that the minutes of Planning Commission meetings from 2002, 2004, and 2013 show that it has only been the residents of Palomar Trace Drive who were present at those meetings or who engaged the staff regarding the developments that were proposed. He said that seems to contradict what Mr. Simpson had said about the Harrodsview neighborhood being very actively involved in what had occurred over the years within the area.

Mr. Walsh added that, at the time the conditional use permit was submitted, the Harrodsview neighborhood association may not have been in an active status. Mr. Walsh said that, throughout all of the development in the neighborhood, the concerns of the Palomar Trace Drive residents had been consistent. The primary concern was when it came to developing Dr. Dozier's property, that it be developed with single family residences similar to what is already existing on Palomar Trace Drive. The other issue was to minimize the encroachment of the P-1 activity that was going on in that area. No one sought to stop any development, and no one ever felt entitled that the area should remain unchanged for their personal enjoyment. He said that when it came time for the development plan for the Dozier property (with the zone change), a strong majority of the Palomar Trace Drive residents met to express those concerns through the Planning Commission's various meetings. He said, through that process, the residents became educated about zoning and other regulations, the Comprehensive Plan, and the micro and macro implications of all of those things.

Mr. Walsh said that they don't necessarily oppose a larger office building as a result of this conditional use request, although it would be nice if it was less than 38,500 square feet in size. However, it would

not be detrimental to the area if it were more than 27,000 square feet. He added that the new residence proposed for the Baker property would be a welcome addition to the Palomar Trace neighborhood. Because there is so much more of the property other than what will be used for that residence, it would be nice if more screening would be provided between the office building and the neighborhood, or maybe one more residence to round out the cul-de-sac. He said, in general, no one on Palomar Trace Drive wants to stop this, and their concerns remain the same as they have always been (i.e., the compatibility of the new homes with the existing and that the encroachment of the P-1 uses into the neighborhood be minimized as much as possible).

Mr. Walsh said that Mr. Murphy had said that some of the concerns that had been expressed about the parking lot were with teenage drinking and drug abuse. He said that Dr. Dozier's field had always been a congregating point for that same activity, some of the participants coming from Sallee Drive for that purpose. With regard to devaluation of property, he noted that so few homes have sold on Palomar Trace Drive, that it is difficult to verify that. He said that six years ago, a single family home that backs up to the Wellington Way office condominiums parking lot sold for over \$300,000; therefore, although it may not be the most desirable backyard neighbor, it does not devalue a property. And, in terms of traffic; the multiple development plans that Mr. Murphy had mentioned, one shows the child care center being converted to a coffee shop and office building. Their traffic engineer did a traffic study that showed that the road connection between Harrodsburg Road and Palomar Centre Drive that will encircle the office building would actually alleviate traffic congestion.

Mr. Walsh apologized for his lengthy presentation, but thought that since he had been involved in nearly all the development that had taken place, as well as what was proposed, he could provide additional insight and information to the Board for their consideration.

Mr. Jim Baker, owner of the subject property, told the Board that everything Mr. Murphy had said during his presentation was accurate; and many things that had been presented otherwise were not correct. He said that he had been involved with much of the development in that area, including the residential subdivisions, adding that he and two other developers had developed the Harrodsview subdivision. He said he still owned one house on Lyon Drive.

Mr. Baker said that no one had "back-doored" anyone regarding this conditional use request, and explained the chain of events leading up to it. He said that he had been invited to bid on the Dozier property and had already made a decision to start selling off property that he currently owned; therefore, he did not bid on the Dozier property. He said that he had developed Palomar Trace subdivision and had worked with Mr. Simpson, who lived in the Harrodsview neighborhood at that time. He said that his original plan was to build townhomes on Palomar Trace Drive but then decided on single family detached residences.

He said it was zoned R-3 (residential), but that category includes single family attached; as well as detached, duplexes and apartments. He said that McNair Way, which stubbed into the then undeveloped properties on Palomar Trace Drive, was supposed to connect to Wellington Way. To accommodate Harrodsview and cut down on traffic in their neighborhood, said he had agreed to dead-end McNair Way, which is its current status.

Mr. Baker said that, with regard to this property, he talked to Mr. Ball after he and his partners had bought the adjoining property and were ready to re-zone it. He said that he had asked him (Mr. Ball), when it came to access into the property; and if he proposed access to Harrodsburg Road, if he would work with him (Mr. Baker) and tie his (Mr. Baker's) driveway into their access, with which Mr. Ball agreed. This was after they had begun the process of rezoning the property. He also said that he had approached the Harrodsview neighborhood before he made the contract to sell the property because he wanted to "do right by the neighborhood." He said that he had spoken personally with Mr. Hairston and tried to contact the residents he believed would be most impacted by any future development of the property.

Mr. Baker said that the detention basin on his property was put in for the benefit of the Palomar Trace neighborhood, which was developed after the Harrodsview neighborhood. Harrodsview has its own storm water detention system, which was put in prior to the one for Palomar Trace. He said that when the detention basin on his property is enlarged, it will be re-sodded and will appear much the same as it does now. He added that, when speaking with Mr. Hairston, he offered him the opportunity to buy the property, because he had said that he and the neighborhood liked the property the way it was.

Mr. Baker said that, on the Comprehensive Plan, the Harrodsview neighborhood had the same

recommendation as Palomar Trace. Some of the zoning (R-3) was the same, as well. He said that he and his co-developers, however, preferred to develop the area as single family homes; which, in effect, down zoned the neighborhood (with regard to use) to single family residential. It was his belief that it worked out well, and that the residents were happy with their neighborhood.

Questions - Mr. Griggs said that he was looking at the deed restrictions and the neighborhood agreement contained in Mr. Simpson's exhibit that Mr. Baker had signed several years ago. He asked Mr. Baker how he reconciled that with what was currently happening with the property. He said that the neighbors had said that they wanted everything to stay the same, noting that they had reason to believe it would, based on that agreement. In response, Mr. Baker said that when he developed Palomar Trace, he made the decision to retain the existing house on the property, as opposed to tearing it down, constructing a street, and building more single family homes; or he could have built townhomes, which he didn't. He said he signed it in good faith at the time. He said he wasn't desperate to sell the property; and if things didn't work out with the current plan, he could sell it to someone else - even one of the Harrodsview neighbors. He said that he had agreed to those restrictions at the time, and he was not trying to backslide on anything that he had signed. He added that the applicant is not asking for a zone change, and it will be used for residential. He said that he wasn't sure that residential would prohibit a large parking lot as part of its development; but he didn't think it would, adding that the Board would need to make that call. Mr. Baker said that someone could tear down the existing house and build a much larger one with a pool, tennis court(s) and everything else that would be allowed for a residence; and the net effect would be the same - it may not be a parking lot, but the green space would be gone.

Applicant Rebuttal - Mr. Murphy said he appreciated those who had spoken who were directly involved, and who clarified statements that had been made by the opposition. He said that he had discussed with Mr. Simpson the possibility of postponing this case and said that he asked for assurance that there would be rational discussion on the topic and about a possible compromise. He added that they had not had an opportunity to speak with the neighbors ahead of time about the neighbors' concerns.

Mr. Murphy said they are aware of the deed restrictions and had seen them before entering into the purchase contract. He said those restrictions run to the owners on Palomar Trace Drive, and it was possible that they would have to approach each property owner for permission before going through with the current proposal. Mr. Murphy reminded the Board that the Urban County Government does not enforce deed restrictions. They are privately enforced. It was an agreement made with the Harrodsview Neighborhood Association, Inc., which was dissolved 14 years ago. Therefore, it only involves property owners on Palomar Trace Drive - not those in the Harrodsview neighborhood. He added that they had been working closely with the owners on Palomar Trace Drive in that regard.

Mr. Murphy said, with regard to storm water detention, the runoff from the two properties will go to the detention basin on the subject property, no matter what. The only question is whether or not an additional underground vault must be constructed to detain it for a longer period of time. He said the existing detention basin was constructed with and for the subdivision, and wasn't there forty years ago. He said its size is not generally apparent from Harrodsburg Road. It will likely need to be made deeper in the middle, but it will look much like it does currently when it's completed. He said that the applicant's engineer thought that the trees along Harrodsburg Road could remain, even with the expanded basin. Those trees were planted around the same time that the detention basin was built (about twenty years ago). He said that the water from the detention basin would flow under Harrodsburg Road; so no one's house in Harrodsview would be flooded because of this project.

With regard to the existing house on the property, Mr. Murphy said that it was suggested to the applicant that the house be replaced. It was not their original intention to demolish the house, and it would certainly be less expensive to allow it to remain. It was the residents on Palomar Trace Drive who requested that that be done, and the applicant agreed to replace it with a new house that would be more in keeping with the other houses on the street.

Mr. Murphy said that the property would be fenced, which would prevent children from having access to it - to either the parking lot or the detention basin.

Mr. Murphy mentioned the opposition's comments about access to Harrodsburg Road. He said that had been discussed during the Planning Commission's zone change hearing.

There had also been another zone change for the child care facility at the corner of Wellington Way and Palomar Centre Drive. A traffic study was done which indicated that the access point that is proposed would make the traffic situation much better. It's currently a bad intersection. He said his clients had

also done a traffic study, and their consultant had the same conclusion. He also said that the Harrodsburg Road ordinance that had been cited was passed 27 years ago (1987) in response to the problems on Harrodsburg Road when it was a 2-lane road.

Mr. Murphy said that they comply with that ordinance, but there have been many other access points that have been approved through the years that do not. The road was 4-laned about ten years ago, and the state installed a median opening in the location of their proposed access, as well as aprons, for a full-service access. He said that Harrodsburg Road is a federal highway that is administered by the State, and the State has final authority over federal highways.

Mr. Murphy said he could understand the neighbors' feelings about the view from their properties changing. He added that there is already a detention basin that was constructed on the property. The house faces Harrodsburg Road, and Mr. Baker had done a good job in how the property was developed. He said, with the proposed residence, that his clients were responding to what the neighbors on Palomar Trace Drive had requested; and the property is part of that subdivision, rather than the Harrodsview subdivision.

Mr. Murphy said, if need be, they can agree with the staff's recommendation to remove the six parking spaces along the property line adjoining the Harrodsview subdivision; and if more need to be moved or removed to make the parking lot farther from those properties on Sallee Drive, they could also agree to that. He said that the only thing before the Board was the parking lot. Detention is handled by grading & construction plans, through the Division of Engineering, who has made a preliminary review of their proposal. Mr. Murphy said that being able to share the access, as they have proposed, will actually make Harrodsburg Road safer.

He said that the parking lot will allow the office building to be bigger, which will help to offset the cost of the new residence, noting that they meet all the Zoning Ordinance requirements for parking as a conditional use in an R-3 zone. He repeated that they understood the neighbors' concerns and believed they could address those concerns.

Board Questions – Mr. Glover said that the staff had recommended postponement of the case, which had not occurred. He asked if the staff would object to a continuance to allow time to consider some of the issues that had been raised. Mr. Emmons responded that the staff would not object to a continuance. Mr. Glover then asked counsel for both sides if they would agree to that. Mr. Griggs said that all of the neighborhood letters that had been received were from the opposition, all of which requested postponement. He said that they were never even considered at the beginning of the hearing.

Mr. Murphy was the first to respond, and he indicated that they were agreeable to a continuance. He said they would be happy to meet with the neighbors to try and work out something that was mutually agreeable. Mr. Simpson said that if the Board desired a continuance of the case, then he would defer to the Board and would not oppose that. Mr. Glover said that the reason for the continuance would be to allow the parties who were present to consult with each other and to see if they could work out at least some of their differences and/or concerns. There was already a lot of information in the record, so they would not have to hear it all again. He said that the Board would like for them to take some time together and discuss it. It would also be a good idea to consult with the staff, because their original recommendation was to postpone this. Because testimony had been presented, it could not be postponed, but it could be continued. In response, Mr. Simpson said that they had been willing to postpone the case; but it was their opinion, in coming to the hearing, that it would be just as easy to argue the case as it would have been to argue about whether or not to postpone. He said that Mr. Murphy was not willing to postpone at the beginning; but if everyone now agreed to a continuance, the opposition had no issue with that. Mr. Glover said that it was the Board's inclination to continue the case, meaning that all the evidence that had already been presented was in the record and would be considered once the case was actually heard. He suggested that they meet with the staff in the meantime, to see if their concerns could be addressed prior to the Board acting on the request.

Ms. Moore asked Mr. Simpson how long he thought they might need. He said that he likes to get things worked out, so any amount of time would be fine. Mr. Sallee said that the Board's next meeting would be May 30th. Mr. Simpson said that he was aware of two significant cases that would be on that agenda, one of which he would be involved with. Mr. Glover suggested two months (June), and Mr. Simpson believed that would be a more suitable date. Ms. Moore mentioned the agreement between Mr. Baker and the neighbors, nothing that nothing could be built (other than residences) until that was resolved.

Action – A motion was made by Mr. Glover seconded by Mr. Griggs, and carried unanimously (Stumbo &

White absent) to continue **C-2014-21: SOLAR ECLIPSE, LLC** – an appeal for a conditional use permit to construct a parking area accessory to an adjacent P-1 zone in a Planned Neighborhood Residential (R-3) zone, at 2101 Palomar Trace Drive, to the June 27th hearing.

G. **Administrative Review** – There were none

IV. **BOARD ITEMS** - The Vice-Chair announced that any items a Board member wished to present would be heard at this time.

V. **STAFF ITEMS** - The Vice-Chair announced that any items a Staff member wished to present would be heard at this time.

Mr. Sallee told the Board that there would be a training opportunity (an APA webinar) the following Monday from 4:00 to 5:30pm in the Division of Planning office, which would count toward 1.5 hours of required training.

Mr. Emmons told the Board that they were invited by the Senior Services Commission to attend a livable Communities Summit on May 8. He said that if four or more Board members planned to attend, which would constitute a quorum, it would need to be advertised in the Lexington Herald-Leader to meet the legal requirements for a public meeting.

In response to a question from Mr. Griggs, Mr. Emmons explained about the legal issues associated with Board or Planning Commission members meeting outside their regular meeting forum. If enough members are present to make a quorum, it must be advertised in the newspaper as any other public meeting would be.

He clarified that this was an invitation to Board and Planning Commission members, but they were not required to attend. If no more than three members chose to attend, there would be no requirement to advertise it.

VI. **NEXT MEETING DATE** - The Vice-Chair announced that the next meeting date would be May 30, 2014.

VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 6:44 p.m.

Kathryn Moore, Vice-Chair

James Griggs, Secretary